

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



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## Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 1976.

618

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ALIDA CATHERINE BROWN, EXECUTRIX, AND CARROLL  
MERCER, INTERVENOR, APPELLANTS,

*vs.*

CLARENCE B. HIGHT.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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FILED DECEMBER 31, 1908.





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# In the Court of Appeals of the District of Columbia.

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No. 1976.

ALIDA CATHERINE BROWN, Executrix, ET AL., Appellants,  
*vs.*  
CLARENCE B. HIGHT.

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*a* Supreme Court of the District of Columbia.

In Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,  
*vs.*

ALIDA CATHERINE BROWN, Executrix of John Marshall Brown,  
Deceased, and CARROLL MERCER, Intervenor, Defendants.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed January 9, 1907.

In the Supreme Court of the District of Columbia. In Equity.

Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,  
*vs.*

JOHN MARSHALL BROWN, Defendant.

To the Supreme Court of the District of Columbia holding an Equity Court for said District:

The Complainant complains as follows:

1. That he is a citizen of the United States, resident in the District of Columbia, and brings this suit in his own right.

2. The Defendant, John Marshall Brown, is a citizen of the United States, resident in the City of Portland, State of Maine, and is sued as hereinafter set out.

3. That one, Sally Carroll, now deceased, late a citizen of the United States, resident in the City of Washington, District of Columbia, duly made and published her last will and testament in writing, bearing date on the 22nd day of May 1894, which has been duly admitted to probate and record by order of this Honorable Court holding a special term for Orphans' Court business in Cause numbered 6702, Administration, of the Dockets of said Orphans' Court, a copy of which said last will and testament is hereto  
2 annexed marked "Exhibit No. 1," and prayed to be taken and read as part hereof.

4. That by the terms of said last will and testament, the Defendant John Marshall Brown together with one, John Wheeler Beale, were named executors and trustees, the said John Wheeler Beale however having duly renounced as executor as aforesaid, letters testamentary were, in said Administration cause, duly issued to the Defendant John Marshall Brown as sole executor of said estate on the 31st day of May 1895, and thereupon said Defendant John Marshall Brown duly qualified as such executor, and assumed and entered upon the trusts and duties on him imposed by the terms and conditions of said last will and testament.

5. That said last will and testament contains among others, the following provision, viz;

"I direct and such is my will, that my executors shall take and hold in trust ten thousand dollars (\$10,000) for the purpose following, that is to say, said sum shall be by them invested in the safest securities, and such as will at all times be sufficient to provide an annuity equal to the amount hereinafter specified, and in further trust to pay to my son Charles H. Carroll six hundred dollars (\$600) free from all charges and in such periodical payments as will insure his comfort and support, at his death this sum of ten thousand dollars shall be disposed of in this way, three thousand shall be given to my Grandson Carroll Mercer, and seven thousand (\$7000.) shall be given to my Grandson John Francis Mercer, to them and their heirs for ever."

Complainant however is informed and believes, and so believing avers, that the assets of said estate were insufficient to pay in full all of the legacies bequeathed by said last will and testament, and that the said legacy of Ten thousand dollars abated to the sum of  
\$7841.24, which said sum, together with all accretions,  
3 thereto, is now held by said Defendant John Marshall Brown as executor and trustee and subject to the terms, trusts and conditions thereon imposed by said last will and testament.

6. That said Carroll Mercer, the party named legatee in said last will and testament, and entitled to an interest in remainder in said sum of \$10,000.00, or any abatement thereof, as will appear by reference to said last will and testament, heretofore, to-wit; on the 16th day of November 1905, sold and assigned to Complainant for good and valuable consideration, all of his, said Mercer's, right, title and interest in and to the aforesaid legacy by a certain deed of assignment in writing, bearing date on said 16th day of November 1905, and signed and sealed by said Carroll Mercer, a copy of which

said deed of assignment is hereto annexed, marked "Exhibit No. 2," and prayed to be taken and read as part hereof.

7. That upon the receipt of said deed of assignment your Complainant immediately addressed a communication to said Defendant John Marshall Brown notifying him of the purchase by Complainant of the interest of said Mercer in said legacy, and enclosed with said communication a copy of said deed of assignment, a copy of which said communication is hereto annexed marked "Exhibit No. 3," and prayed to be taken and read as part hereof; which said communication and copy of deed of assignment were duly received by Defendant, and the receipt thereof acknowledged by him in a communication addressed to Complainant, a copy of which is annexed hereto marked "Exhibit No. 4," and prayed to be taken and read as part hereof.

4        8. That Complainant is informed and believes and therefore avers, that the said Charles H. Carroll, the person at whose death the aforesaid legacy was to be paid to the said Carroll Mercer, died in the City of Dayton in the State of Ohio, on the 14th day of January 1906; that upon being informed of said death as aforesaid, Complainant addressed a communication to said Defendant requesting him to inform Complainant when the interest of the said Mercer in said legacy would be payable, a copy of which said communication is hereto annexed marked "Exhibit No. 5," and prayed to be taken and read as part hereof; to which said communication Complainant received a reply from said Defendant confirming Complainant's information as to the death of said Charles H. Carroll, and referring Complainant to his, Defendant's attorney, a copy of which said reply is hereto annexed marked "Exhibit No. 6," and prayed to be taken and read as part hereof.

9. Complainant is advised by counsel that the said legacy bequeathed as aforesaid to the said Carroll Mercer became due and payable immediately upon the death of the said Charles H. Carroll, and that Complainant, by virtue of said deed of assignment, is entitled to receive and collect from said Defendant John Marshall Brown executor and trustee under said last will and testament of said Sally Carroll deceased the proportionate share in said legacy provided by the terms of said last will and testament for said Carroll Mercer and his heirs.

10. Complainant further avers that he has requested the said Defendant John Marshall Brown as executor and trustee as aforesaid to pay to him the said proportionate share of the said Carroll Mercer in said legacy, but said Defendant has at all times refused, and still refuses so to do.

5

Wherefore, the premises considered, Complainant prays;

### *Prayers.*

1. That said John Marshall Brown, executor and trustee; herein named Defendant, may be made such, and by proper process required to appear and answer the exigencies of this Bill of Complaint.

2. That a decree be passed herein directing the said John Mar-

shall Brown executor and trustee to pay to Complainant the distributive share of the said Carroll Mercer in the aforesaid legacy bequeathed to him by the said last will and testament of said Sally Carroll.

3. That this Cause be by order of this Honorable Court referred to the Auditor of this Court to state the account of the said John Marshall Brown executor and trustee with reference to said legacy; and to determine and report to this Court the amount of the distributive share of the said Carroll Mercer in said legacy bequeathed to him by the said last will and testament of the said Sally Carroll deceased.

4. That Complainant may have such other and further relief in the premises as the nature of the case may require.

CLARENCE B. HIGHT.

P. A. BOWEN, JR.,  
HENRY S. MATTHEWS,  
*Sol's for Complainant.*

6 DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the Bill of Complaint by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge, are true, and that the facts therein stated upon information and belief, I believe to be true.

CLARENCE B. HIGHT.

Subscribed and sworn to before me this Eighth day of January A. D. 1907.

[SEAL.]

FRED'K C. HANDY,  
*Notary Public, D. C.*

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EXHIBIT No. 1.

In the name of God. Amen.

I Sally Carroll of Washington City in the District of Columbia being of sound and disposing mind memory and understanding, considering the certainty of death and the uncertainty of the time thereof and being desirous to settle my worldly affairs and thereby be the better prepared to leave this world when it shall please God to take me hence, do therefore make and publish this my Last Will and testament in manner and form following that is to say

First and principally I commend my soul into the hands of Almighty God, and my body to the Earth, and to be laid by the side of my beloved husband and under the place now occupied by the remains of my precious little son Howard and after my debts and funeral charges are fully paid, I direct and such is my will that my Executors to be hereinafter named, shall invest in the safest and best securities one thousand (\$1000) for all time, to keep in perfect order and repair my vault in Oak Hill Cemetary Georgetown in the District of Columbia from the proceeds of the sale of my property on



the corner of F and 18th Streets in the City of Washington in the District of Columbia, I direct and such is my Will that my Executors shall take and hold in trust ten thousand dollars (\$10,000) for the purpose following that is to say said sum shall be by them invested in the safest securities, and such as will at all times be sufficient to provide an annuity equal to the amount hereinafter specified, and in further trust to pay to my son Charles H. Carroll  
 8 six hundred dollars (\$600) free from all charges and in such periodical payments as will insure his comfort and support at his death this sum of ten thousand dollars shall be disposed of in this way three thousand shall be given to my grandson Carroll Mercer, and seven thousand (\$7,000) shall be given to my grandson John Francis Mercer, to them and their heirs forever—I direct and such is my will that my Executors shall invest in the safest and best securities fifteen thousand dollars (\$15000) and pay to my daughter Carolin Ann Bolles nine hundred dollars (\$900) annually, at the death of my daughter this fifteen thousand dollars (\$15000) shall be divided in this way \$2500 to my grand-aughter Sally Carroll Payson \$2500 to my grand-aughter Mary Bruster Brown \$2,500 to my grandson Carroll Brown, and \$7,500 to my grand-aughter Violetta Lansdale Brown, to them and their heirs forever—I direct and such is my will that my Executors shall invest in safest and best securities ten thousand dollars (\$10,000) and pay to my daughter Sally Virginia Esterhazy annually -(\$600) six hundred dollars, at the death of my daughter this ten thousand dollars (\$10,000) shall be divided between my grand-aughter Catherine Dubois Beal, and my grandson Samuel Sprigg Carroll share and share alike to them and their heirs forever—and I do herein appoint my Son in Law John Marshall Brown and my Grandson John Wheeler Beale, Executors of this my last will and Testament, in testimony thereof I have hereunto set my hand and fixed my seal this twenty second day of May (22nd day of May) Eighteen hundred and ninety four (1894)

SALLY CARROLL. [SEAL.]

9 Signed sealed published and declared by Sally Carroll the above testatrix as and for her Last Will and Testament in the presence of us who at her request and in the presence of each other have subscribed our name- as witnesses thereto

KATE T. FRICK  
 JEANNIE TURNBULL  
 NANNIE T FRICK

10 Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the foregoing is a true copy of the original will of Sally Carroll deceased, filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, aforesaid; and that the said

will, after having been duly proven, was, by order of the said Court, in accordance with the laws of the District of Columbia, admitted to probate and record on the 31st day of May A. D. one thousand eight hundred and ninety five.

I further certify, That I have compared the foregoing copy of said will, with the original record in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate court, this 8th day of January, A. D. 1907.

[SEAL.]

JAMES TANNER,  
*Register of Wills for the District of Columbia,*  
*Clerk of the Probate Court.*

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EXHIBIT No. 2.

I, Carroll Mercer of the city of Washington District of Columbia, being one of the legatees named in the last will and testament of my grandmother, Sally S. Carroll, whose said will is duly recorded in the office of the Register of Wills in said District, do hereby, for good and valuable consideration the receipt whereof at and before the signing and delivery of these presents is hereby acknowledged, sell, assign, transfer and convey to Clarence B. Hight of said city and District, all of my right, title and interest in and to the legacy bequeathed to me by the said Sally S. Carroll by her said last will and testament.

In testimony whereof I have hereunto set my hand and affixed my seal this 16th day of November A. D. 1905.

CARROLL MERCER. [SEAL.]

Wit.: P. J. WALSH.

DISTRICT OF COLUMBIA, ss:

I, Patrick J. Walshe a Notary Public in and for said District, do hereby certify that Carroll Mercer, party to a certain deed of assignment bearing date the 16th day of November A. D. 1905 and hereto annexed, personally appeared before me in said District, the said Carroll Mercer being personally well known to me as the person who executed said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this 16th day of November A. D. 1905.

PATRICK J. WALSH, [SEAL.]  
*Notary Public, D. C.*

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## EXHIBIT No. 3.

Clarence B. Hight, Colorado Building.

WASHINGTON, D. C., November 17th, 1905.

Gen. John Marshall Brown, Executor of and trustee under the will of Sally S. Carroll, Portland, Me.

DEAR SIR: I beg to notify you that I have purchased from Mr. Carroll Mercer his interest in the legacy bequeathed to him by the last will and testament of Mrs. Sally S. Carroll, and that I hold an assignment from Mr. Mercer of his interest in this legacy, a copy of which assignment I enclose herewith.

Very truly yours,  
(Signed)

C. B. HIGHT.

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## EXHIBIT No. 4.

J. B. Brown &amp; Sons, Portland, Maine.

PORTLAND, Me., Nov. 20, 1905.

Mr. Clarence B. Hight, Washington, D. C.

DEAR SIR: I am in receipt of your letter of the 17th inst. notifying me that you have purchased from Mr. Carroll Mercer his interest in the legacy bequeathed to him, also enclosing assignment from Mr. Mercer of his interest in this legacy.

You are, of course, familiar with the Will, which gave to Mr. Charles H. Carroll \$10,000 in trust. You are probably aware that in view of the impossibility of carrying out, as Executor, the conditions of the Will, I was obliged to bring suit in equity against all persons interested in the decision in order to have the direction of the Court as to my duty in the premises. Under the terms of the decree, the legacies provided for were to abate equally and the legacy to Chas. H. Carroll was abated from the sum of \$10,000 to the sum of \$7,851.53 leaving the portion to be paid to Mr. Carroll Mercer, in the event of his surviving his Uncle, 3/10 of that amount. Should Mr. Mercer, however; die before his Uncle, this amount would go to his heirs.

Truly yours,

JNO. MARSHALL BROWN.

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## EXHIBIT No. 5.

Clarence B. Hight, Colorado Building.

WASHINGTON, D. C. January 26th, 1906.

Gen. John Marshall Brown, Executor of and trustee under the will of Sally S. Carroll, Portland, Me.

DEAR SIR: I am informed that Mr. Chas. H. Carroll died at his home in Ohio on the 14th inst. If this is the case will you kindly

advise me when the legacy under the will of the late Sally S. Carroll will be distributed and when I may expect to receive the portion of Mr. Carroll Mercer, which was assigned by him to me.

Very truly yours,  
(Signed)

C. B. HIGHT.

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## EXHIBIT No. 6.

Estate of J. B. Brown, Portland, Me.

JAN. 29, 1906.

Mr. Clarence B. Hight, Washington, D. C.

SIR: I am in receipt of your letter of the 26th inst. Mr. Carroll died in Dayton, Ohio, on the 14th and was buried in the National Cemetery there.

With reference to your claim upon that portion of his legacy which would come to Mr. Carroll Mercer, I beg to say that under all the circumstances, I feel that I should have some judicial opinion as to my duty in the matter. Meanwhile, this is to advise you that Mr. F. D. McKenney of Washington, who has been my counsel during the period of my Executorship, will represent me and if you wish for definite information with reference to this matter, will you please apply to him.

Very truly yours,

JNO. MARSHALL BROWN.

16

*Answer.*

Filed June 8, 1907.

In the Supreme Court of the District of Columbia.

In Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,

vs.

JOHN MARSHALL BROWN.

This defendant, now and at all times saving and reserving unto himself all benefit and advantage of exception to the many errors, uncertainties, imperfections and insufficiencies in complainant's said bill of complaint contained, as if he had specifically demurred thereto for answer thereto, or to so much and such parts thereof as this defendant has any knowledge, information or recollection, saith,

1. This defendant admits that the complainant Clarence B. Hight is a citizen of the United States, a resident of the District of Columbia, and that he brings this suit in his own right.

2. This defendant admits that he is a citizen of the United States, and a resident of the City of Portland in the State of Maine, and is sued as set forth in complainant's said bill of complaint.

3. This defendant admits that Mrs. Sally S. Carroll, lately a citizen of the United States and resident of the City of Washington in the District of Columbia, departed this life on or about the 11th day of February A. D. 1895 having duly made and published her last will and testament with various codicils thereto, all in writing, the body of which said will bears date the 22d day of May, 1894 and that said will and codicils were duly admitted to probate and record by the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, on or about the 31st day of May, 1895 in Case No. 6702 Administration, of the dockets of the Orphans Court of said District.

This defendant admits that said last will and testament admitted to probate and record as hereinbefore set forth is in substantial accord with the alleged copy thereof annexed to complainant's bill of complaint marked "Exhibit No. 1", but for greater certainty and in case of necessity this defendant prays leave to refer to the original of said last will and testament or to a duly authenticated copy thereof.

4. This defendant admits that he and John Wheeler Beale were named in and by said last will and testament as Executors thereof, and also admits that said John Wheeler Beale did renounce his right to cooperate with this defendant in the administration of the assets of the estate of said decedent, and thereafter this defendant alone having duly qualified as executor of said last will and testament, on or about the 31st day of May, 1895 was granted letters testamentary in said cause No. 6702 and he assumed and entered upon the execution of the duties and trusts imposed upon him thereby.

5. This defendant admits that said last will and testament contains, among other clauses making annuities and bequests of money to various legatees, the following:

"I direct and such is my will that my Executors shall take and hold in trust \$10,000 for the purpose following, that is to say, said sum shall be by them invested in the safest securities, and such as will at all times be sufficient to provide an annuity equal to the amount hereinafter specified, and in further trust to pay to my son Charles H. Carroll \$600.00 free from all charges and in such periodical payments as will insure his comfort and support. At his death this sum of \$10,000.00 shall be disposed of in this way,—three thousand shall be given to my grandson Carroll Mercer and seven thousand shall be given to my grandson John Francis Mercer, to them and their heirs forever." \* \* \*

And defendant further admits that after the payment of debts the assets of said decedent's estate were insufficient to provide for and pay in full all of the annuities and legacies above referred to and that instead of realizing a fund of \$10,000.00, as anticipated in and by said last will, there came into the hands of this defendant as such Executor to satisfy the requirements and obligations of said bequest the sum of \$7,841.24 only, of which said sum the proportional share payable to the legatee Carroll Mercer in the possession or under the control of this defendant at the date of filing com-

plainant's said bill of complaint amounts to the sum of \$2,352.37, which sum, except as hereinafter set forth, this defendant holds as Trustee for the benefit of said Carroll Mercer and does not hold same as Executor under the last will and testament of said Sally S. Carroll, as in complainant's said bill of complaint is charged.

Further answering this charge, this defendant says that on or about December 15, 1897 this defendant filed in the Orphan's Court of the District of Columbia his final account as Executor of the estate of Sally S. Carroll, which said account showed the assets  
19 of said estate to have been fully administered, and said final account was on or about said 15th day of December A. D. 1897 duly approved and passed by the Associate Justice of the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court Business, and this defendant was then and there discharged from further duty concerning said estate as executor.

6. This defendant upon information and belief denies that on or about the 16th day of November, 1905, or any other date, said Carroll Mercer, legatee as aforesaid, sold and assigned to the complainant Clarence B. Hight for a good and valuable consideration or otherwise all or any of his right, title and interest in and to his proportion of the aforesaid legacy, and if said averment to the contrary or any thereof be deemed to be material to complainant's right to obtain all or any of the relief prayed for in this cause, this defendant calls for strict proof thereof.

7. This defendant admits the receipt in ordinary course of mail of the original of the letter addressed to him by the complainant, a copy of which is annexed to complainant's said bill of complaint marked "Exhibit No. 3", and also admits the receipt of a copy of the enclosure therein referred to, and also admits having written and mailed to said complainant the original letter, a copy of which is annexed to complainant's bill of complaint marked "Exhibit No. 4": and defendant further admits that said letters were promptly mailed at or about their respective dates and were transmitted and delivered to their respective addresses in the ordinary course of the  
mails.

20 8. This defendant admits that the annuitant Charles H. Carroll died at Dayton, Ohio, on or about the 14th day of January, 1906, and also admits the receipt in due course of mail from the complainant of the original communication, a copy of which is annexed to complainant's bill of complaint marked "Exhibit No. 5", and also admits writing and mailing to complainant a letter in reply to said communication, a copy of which letter is annexed to complainant's bill of complaint marked "Exhibit No. 6."

9. This defendant admits as matter of mixed fact and law that the said sum of \$2,352.37, above referred to, became due and payable to said Carroll Mercer within a reasonable time after the death of said annuitant Charles H. Carroll, but this defendant denies that by virtue of the alleged assignment referred to by complainant or otherwise said complainant is entitled to receive and collect from this defendant said sum of \$2,352.37, being the proportional share



of said abated legacy payable under the terms of said last will and testament to the legatee Carroll Mercer.

10. This defendant admits that as the Trustee responsible in law as well as in good conscience for the proper application and payment of said sum of \$2,352.37 he has refused, and unless otherwise ordered by this Honorable Court or some other court of competent jurisdiction, will continue to refuse to pay to the said complainant said sum, and, except as hereinafter noted, will refuse to pay to said complainant any portion or part thereof.

21 11. Further answering said complainant's bill of complaint this defendant upon information and belief avers as follows;

That prior to the year A. D. 1905 complainant's alleged assignor Carroll Mercer had for a long time lived amidst comfortable and affluent surroundings; he was of over generous disposition, extravagant in habits and tastes and of improvident temperament. By reason of said disposition, habits and temperament and various other causes not necessary to be here enumerated, said Carroll Mercer in or about the year A. D. 1905 had become so reduced in fortune and income that he was without constant or steady employment, was separated from his family both immediate and general, was without home or place of permanent abode, and was subsisting as best he could on the uncertain earnings which from time to time he was able to make by the undertaking and doing of such odd and occasional employments and jobs as fell in his way or which he was able to find or obtain.

While in such plight and under stress of such straightened circumstances, said Carroll Mercer in or about November A. D. 1905 applied to one Nathan H. Baker, a real estate and general broker having an office and doing business in the City of Washington, District of Columbia, to obtain for him (Mercer) a loan or advance on the security of his then vested interest as remainderman in his proportional share of said abated legacy, said proportional share amounting to \$2,352.37 as hereinbefore set forth, and said Baker on such application undertook to obtain such a loan or advance; and also agreed in case of inability to procure the same to obtain, if possible, a purchaser for said vested interest in said proportional share of said legacy upon terms and for a price to be submitted to and accepted by said Carroll Mercer.

22 That thereafter, on or about the 16th day of November A. D. 1905, said Nathan H. Baker submitted to said Carroll Mercer for his acceptance and signature the alleged assignment referred to in complainant's said bill of complaint and made a part thereof, being identified therein and marked "Exhibit No. 2", and at the same time tendered to said Mercer for his acceptance and signature as a part of the transaction and explanatory of the relations about to be contracted and entered into by and between said Carroll Mercer and the complainant herein. Clarence B. Hight, another paper, denominated an agreement, the original of which, signed by both said Carroll Mercer and said Clarence B. Hight, is in the possession or under the control of the latter, a copy whereof is hereto annexed

marked "Defendant's Exhibit A" and is prayed to be read and taken to be a part of this answer as fully as though set forth in the body thereof.

At the time of tendering said alleged assignment and said agreement to said Carroll Mercer for acceptance and, if accepted, signature, said Baker also produced and tendered to said Mercer the sum of \$240.00, indicating that the difference between said sum of \$240.00 and the sum of \$275.00 recited in said agreement of November 16, 1905 as about to be "loaned to the said Mercer" by said Hight, constituted or was to be used to pay the commissions or charges of said Baker for procuring said loan.

By reason of his necessitous condition, as above indicated, and also by reason of his careless, extravagant and improvident habits said Carroll Mercer accepted the said offer of \$240.00 made to him by  
23      said Baker, acting for and in behalf of said Clarence B. Hight, and did sign and deliver to said Baker the alleged assignment and the agreement, both bearing date of November 16, 1905, as aforesaid.

At the time of entering upon said transaction and before any money whatever had passed between the parties thereto, including said Baker, both said Hight and said Baker were fully informed as to the character of said Mercer's interest in and claim to said sum of \$2,352.37 and were aware that said Mercer's right to the possession thereof would become absolute upon the death of his said Uncle Charles H. Carroll and were also fully aware that said Charles H. Carroll was then and there upwards of sixty-six years of age and was then and for a number of years prior to said year A. D. 1905 had been in poor and failing health.

This defendant upon information and belief states and avers that said Carroll Mercer and said complainant Clarence B. Hight, at the time of the transaction in question were personally unknown to each other and had no negotiations about the same other than as above set forth, and further that said Hight and said Mercer have never met since said transaction, and that their respective rights and interests in and to the said sum of \$2,352.37 now in the possession of this defendant are dependent solely upon the proper construction of the two instruments above referred to and designated complainant's "Exhibit No. 2" and "Defendant's Exhibit A," as interpreted in the light of established principles of law and equity.

This defendant upon information and belief further avers that at  
24      no time has said complainant Clarence B. Hight, or any one acting for him or in his behalf, transferred to said Carroll Mercer, nor to any one designated by him, the lot of ground referred to in "Defendant's Exhibit A" situate, lying and being in Baltimore City, State of Maryland, nor has anything of value other than said sum of \$275.00, of which said Carroll Mercer received but \$240.00 as aforesaid, ever passed from said complainant Clarence B. Hight as consideration for the alleged assignment to him by said Carroll Mercer of all of the latter's right, title and interest in and to said sum of \$2,352.37.

This defendant further avers on information and belief that on or



about the 14th day of November A. D. 1906 and also on or about the 15th day of November A. D. 1906 there was tendered to said Clarence B. Hight at his office in the Colorado Building, on the Northeast corner of G and 14th streets N. W., in the City of Washington, the sum of \$291.50 in full repayment to the total amount theretofore loaned by said Hight to said Mercer together with interest thereon at the rate of six per centum per annum from the date of said loan to the date of such tender, but complainant Hight refused to accept said sum of money so tendered, as will more fully appear from a perusal of defendant's exhibits marked "Defendant's Exhibits B, C and D", hereto annexed and prayed to be read and made a part hereof as though set forth herein.

Upon information and belief this defendant further avers that said Carroll Mercer never saw the alleged lot of ground in Baltimore City referred to in said agreement of November 16, 1905, and at the time of signing said agreement had no information of or concerning the same and did not then nor at any time since had he had any interest or concern therewith, but this defendant is informed and believes and hence avers that reference to said lot of ground was made in said agreement by said complainant Hight or by his direction for the sole purpose of misleading said Mercer and to enable him to support or gain countenance for the unconscionable claim of right to receive from this defendant the said sum of \$2,352.37, which claim he is here asserting.

This defendant is advised by counsel and being so advised avers that the transaction between complainant Clarence B. Hight and Carroll Mercer, evidenced by "Complainant's Exhibit No. 2" and "Defendant's Exhibit A," constituted at most but a loan from said complainant Hight to the defendant Carroll Mercer of the sum of \$275.00, which sum, together with interest thereon at the rate of six per centum per annum, was agreed by the said Carroll Mercer to be repaid to said Hight on or before November 16, 1906, and in default of such repayment said complainant Hight, by virtue of his possession of the original of the alleged assignment designated as "Complainant's Exhibit No. 2," was to look to the interest in remainder of said Carroll Mercer in and to the said sum of \$2,352.37 for his security and eventual payment; that having refused to accept said sum of \$291.50 as and when tendered to him prior to said November 16, 1906, said complainant Hight, neither by virtue of his continued possession of said alleged assignment designated as "Complainant's Exhibit No. 2," nor otherwise, has any further interest in said sum

of \$2,352.37 or any part thereof, and upon the payment to said Hight of said sum of \$291.50, which said sum this defendant hereby tenders himself as ready and willing to pay to said complainant upon the order of this Court, this defendant should be discharged from any and all further obligation to the complainant in the premises.

In view of all of the foregoing, and particularly upon complainant's own showing as made in his said bill of complaint, this defendant further says that said Carroll Mercer, who is at present understood to be in the City of New York, State of New York, is a necessary

party to the present proceedings and should be made such a party before any such relief as is prayed in complainant's bill of complaint can or ought to be granted against him.

Wherefore, having thus fully answered, this defendant prays that he may be hence dismissed with his reasonable costs in this behalf expended.

JNO. MARSHALL BROWN.

McKENNEY & FLANNERY,  
*Solicitors for Defendant.*

STATE OF MAINE,  
*City of Portland, ss:*

I, John Marshall Brown, being first duly sworn do on my oath depose and say that I am the person named as party defendant in the foregoing and annexed Answer to the Bill of Complaint of Clarence B. Hight; that I have read over said Answer to which my name is  
27 subscribed and know well the contents thereof; the matters  
and things therein stated upon my own knowledge are true,  
and the matters and things therein stated upon information  
and belief are respectively believed by me to be true.

JNO. MARSHALL BROWN.

Subscribed and sworn to before me this 6th day of June A. D. 1907.

[SEAL.]

CHARLES L. MARSTON,  
*Notary Public.*

28

Copy.

#### DEFENDANT'S EXHIBIT A.

This agreement, made this 16th day of November in the year One thousand nine hundred and five by and between Carroll Mercer of the City of Washington, District of Columbia, party of the first part and Clarence B. Hight of the same place, party of the second part:

Whereas, The said Hight has this day loaned to the said Mercer the sum of Two hundred and seventy-five dollars, (\$275.00) the receipt of which the said Mercer hereby acknowledges.

Now therefore, the said Hight hereby agrees upon repayment of the said sum of Two hundred and seventy-five dollars (\$275.00) with interest at the rate of six per cent from date to the time of said repayment, provided same shall occur within the period of twelve months from the date hereof, and in that event only, to deed to the said Mercer in fee simple and without encumbrance of any sort.

The lot of ground situate lying and being in Baltimore City State of Maryland and described as follows; that is to say: beginning for the same on the south side of Rayner Avenue at a point, from which a line drawn at right angles to Rayner Avenue would comprise the easternmost line of the lot now being described and the westernmost line of the lot adjoining to the eastward, said beginning being at —

the distance of twelve hundred and seven feet and two inches easterly from the Southeast corner of Rayner Avenue and the Bloomingdale Road, and running thence southerly at right angles with  
29 Rayner Avenue one hundred and thirty feet to an alley twelve feet wide; thence westerly binding on the north side of said alley one hundred feet; thence northerly at right angles with Rayner Avenue one hundred and thirty feet to Rayner Avenue, and thence easterly binding on the South side of Rayner Avenue one hundred feet to the beginning.

Witness, the hand and seals of the parties hereto, this day and year first above written.

CARROLL MERCER. [SEAL]

CLARENCE B. HIGHT. [SEAL]

Test:

NATHAN H. BAKER.

30

"DEFENDANT'S EXHIBIT B."

Law Offices of Wayne MacVeagh, Frederic D. McKenney, John Spalding Flannery, William Hitz, 1317 F Street N. W., Washington, D. C.

NOVEMBER 14, 1906.

Clarence B. Hight, Esqr., Colorado Building Washington, D. C.

DEAR SIR: By direction of Mr. Carroll Mercer I hand you herewith Two hundred and ninety dollars (\$290.00) in United States Treasury Gold notes together with One dollar and fifty cents (\$1.50) in United States Silver coin, making in all the total sum of \$291.50, in full repayment of the sum of \$275.00 loaned by you on or about November 16, 1905 to Mr. Mercer, and interest thereon at the rate of six per centum per annum for the period of one year from that date. Mr. Mercer also directs me to return to you the enclosed paper writing dated November 16, 1905, signed by yourself and which among other things refers to the above mentioned loan, and he requests me to say that without reservation of any sort or kind he neither has nor at any time has made claim of any right, title or interest in or to the property situated in the City of Baltimore, State of Maryland, therein particularly described, and further, in order that you may be under no embarrassment whatever in that regard by reason of the terms of the above mentioned paper writing, he hereby waives and disavows any claim or interest of any sort  
31 or kind which he might otherwise, by reason of the terms of said paper writing, be supposed to have in said property.

Mr. Mercer has also forwarded to me your letter to him of October 19, 1906, which, in view of the above, would seem to require no answer on his part beyond the acknowledgment of its receipt.

In view of the above you are at full liberty to avail yourself of the opportunity to make the advantageous sale of said property referred to by you therein.

Kindly favor me with an acknowledgement of receipt of the above mentioned sum of \$291.50, and greatly oblige,

Yours very truly,

F. D. McKENNEY.

Enclosures I.

"DEFENDANT'S EXHIBIT C."

Law Offices of Wayne MacVeagh, Frederic D. McKenney, John Spalding Flannery, William Hitz, 1317 F Street N. W., Washington, D. C.

NOVEMBER 15, 1906.

Clarence B. Hight, Esqr., Colorado Building, Washington, D. C.

DEAR SIR: Mr. Hitz having reported to me that you had declined to receive the sum of \$291.50 in currency which on yesterday I tendered to you through Mr. Hitz on behalf of Mr. Carroll Mercer in full repayment of the sum of \$275.00 loaned by you to Mr. Mercer on or about November 16, 1906, with interest thereon at six per centum per annum for one year from said date, I now hand you herewith as a second tender of the payment of said loan and interest a certified check on the Commercial National Bank of this city payable to your order for the said sum of \$291.50.

By direction of Mr. Mercer I also hand you herewith the paper writing dated November 16, 1905, signed by yourself, and which among other things refers to the above mentioned loan, together with a carbon copy of my letter of yesterday addressed and delivered to you, and accompanying the aforesaid tender of money by Mr. Hitz, which letter more fully discusses the matter of the aforesaid loan and paper writing.

Yours very truly,

F. D. McKENNEY.

Enclosures I.

*Replication.*

Filed June 13, 1907.

In the Supreme Court of the District of Columbia, Holding Equity Court.

Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,

*vs.*

JOHN MARSHALL BROWN, Defendant.

The complainant hereby joins issue with the defendant.

HENRY S. MATTHEWS,

P. A. BOWEN, JR.,

*Solicitors for Complainant,*

*Petition of Carroll Mercer for Leave to Intervene, &c.*

Filed July 17, 1907.

In the Supreme Court of the District of Columbia, Holding an  
Equity Term.

In Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,  
*vs.*  
JOHN MARSHALL BROWN, Defendant.

Now comes the petitioner, Carroll Mercer, and representing to  
this Honorable Court that he is the identical person referred  
34 to by said name in the various paragraphs of complainant's  
bill of complaint filed in this cause, and particularly men-  
tioned and referred to in paragraph 6 thereof, as the person who,  
on the 16th day of November, 1905 sold and assigned to the com-  
plainant Clarence B. Hight all of his right, title and interest in and  
to a certain legacy in his favor under the will of the late Sally S.  
Carroll, and further representing to this Honorable Court that he  
is pecuniarily interested in the outcome of said proceedings, moves  
this Honorable Court for leave to intervene in said cause and to be  
made a party defendant therein.

CARROLL MERCER.

Messrs. Henry S. Matthews and P. A. Bowen, Jr., Solicitors for  
Complainant.

GENTLEMEN: Please take notice that on the 16th day of July  
A. D. 1907, I will, on behalf of the petitioner, Carroll Mercer sub-  
mit the foregoing petition and motion for leave to intervene and  
be made a party defendant in said cause to the Associate Justice of  
the Supreme Court of the District of Columbia holding an Equity  
Term.

F. D. McKENNEY,  
J. S. FLANNERY,  
*On Behalf of Carroll Mercer, Petitioner.*

We assent that an order may be entered in the above entitled  
cause permitting the petitioner, Carroll Mercer, to intervene therein  
and to be made a party defendant in and to complainant's  
35 bill of complaint.

P. A. BOWEN, JR., &  
H. S. MATTHEWS,  
*Solicitors for Complainant, Clarence B. Hight.*

*Order Granting Leave to Carroll Mercer to Intervene, &c.*

Filed July 17, 1907.

In the Supreme Court of the District of Columbia, Holding an  
Equity Term.

In Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,

vs.

JOHN MARSHALL BROWN, Defendant.

Upon consideration of the petition of Carroll Mercer for leave to intervene and to be made a party defendant in the above entitled cause, and it appearing that the solicitors for the complainant assent thereto, it is this 17th day of July A. D. 1907, ordered that the said Carroll Mercer have leave to intervene and be made a party defendant therein with right to plead, answer or demur to complainant's said bill of complaint and to take such other action in the course of said cause as he may be advised.

THOS. H. ANDERSON,  
Associate Justice D. C.

36

*Separate Answer of Carroll Mercer.*

Filed July 17, 1907.

In the Supreme Court of the District of Columbia, Holding an  
Equity Term.

In Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,

vs.

JOHN MARSHALL BROWN and CARROLL MERCER, Defendants.

This defendant, now and at all times, saving and reserving unto himself all benefit and advantage of exception to the many errors, uncertainties, imperfections and insufficiencies in complainant's said bill of complaint contained as if he had specifically demurred thereto, for answer to complainant's said bill of complaint, or to so much and such parts thereof as this defendant has any knowledge, information or recollection concerning, saith:

1. This defendant admits that the complainant Clarence B. Hight is a citizen of the United States, a resident of the District of Columbia, and that he brings this suit in his own right.

2. This defendant admits that the defendant John Marshall Brown is a citizen of the United States, and a resident of the City of Portland in the State of Maine, and that he is sued as set forth in

37 complainant's said bill of complaint. This defendant also admits as though the same had been charged in complainant's said bill of complaint that this defendant is a citizen of the United States and at the time of the occurrences in said bill of complaint set forth, was a resident of the City of Washington, District of Columbia, and further that he is at present temporarily residing in the City of New York, State of New York.

3. This defendant admits that Mrs. Sally S. Carroll, lately a citizen of the United States and resident of the City of Washington in the District of Columbia, departed this life on or about the 11th day of February A. D. 1895 having duly made and published her last will and testament with various codicils thereto, all in writing, the body of which said will bears date the 22nd day of May, 1894, that said will and codicils were duly admitted to probate and record by the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, on or about the 31st day of May, 1895, in Case No. 6702 Administration, of the dockets of the Orphans' Court of said District.

This defendant admits that said last will and testament is in substantial accord with the alleged copy thereof annexed to complainant's bill of complaint marked "Exhibit No. 1," but for greater certainty and in case of necessity this defendant prays leave to refer to the original of said last will and testament or to a duly authenticated copy thereof.

4. This defendant admits that the defendant John Marshall Brown and John Wheeler Beale were named in and by said last will and testament as Executors thereof, and also admits that said 38 John Wheeler Beale did renounce his rights under said will to coöperate in the administration of the assets of the estate of said decedent, and that thereafter the defendant John Marshall Brown alone duly qualified as such executor and that on or about the 31st day of May, 1895, letters testamentary in said cause No. 6702 were duly granted to him and he assumed and entered upon the execution of the duties and trusts imposed upon him by the terms and conditions of said last will and testament and said letters testamentary.

5. This defendant admits that said last will and testament contains among other clauses making annuities and bequests of money to various legatees, the following:

"I direct and such is my will that my Executor shall take and hold in trust \$10,000 for the purposes following, that is to say, said sum shall be by them invested in the safest securities, and such as will at all times be sufficient to provide an annuity equal to the amount hereinafter specified, and in further trust to pay to my son Charles H. Carroll \$600.00 free from all charges and in such periodical payments as will insure his comfort and support. At his death this sum of \$10,000.00 shall be disposed of in this way, three thousand shall be given to my grandson Carroll Mercer and seven thousand shall be given to my grandson John Francis Mercer, to them and their heirs forever."

And this defendant further admits that after the payment of



debts the assets of said decedent's estate were insufficient to provide for and pay in full all of the annuities and legacies specified in said will and above referred to and that instead of realizing a fund of \$10,000 as anticipated in and by said last will, there came into the hands of the defendant John Marshall Brown as such Executor to satisfy the requirements and obligations of said bequest of \$10,000.00 but the sum of \$7,841.24 only, of which said sum the proportional part payable to this defendant as legatee as aforesaid and now in the hands of said defendant John Marshall Brown as Trustee for the benefit of this defendant and payable by said John Marshall Brown to this defendant or upon this defendant's proper order to his creditors or assignees amounts to the sum of \$2,352.37.

6. This defendant admits that on or about the 16th day of November A. D. 1905 he did execute and deliver to one Henry A. Baker, then acting as an agent or go-between, for delivery to the complainant Clarence B. Hight the paper writing referred to in paragraph 6 of complainant's said bill of complaint as annexed thereto and marked "Exhibit No. 2," but denies that by said paper writing he sold and assigned to said complainant Hight, or to any one else, all of his right, title and interest in and to said sum of \$2,352.37, being the entire amount of the abated legacy in this defendant's favor as aforesaid.

Further answering said paragraph 6 of complainant's said bill of complaint, this defendant says that the paper writing in question so annexed to complainant's said bill of complaint and marked "Exhibit No. 2" was executed and delivered by him under the following circumstances:

40 In the year A. D. 1905 and during the months of October and November thereof, this defendant was in a greatly straightened financial condition, and was without any certain means of livelihood or source of income; he was without any home or place of permanent abode and was compelled to rely for subsistence upon such meagre and uncertain earnings as could be obtained from odd and occasional employments.

While in such plight and under the stress of such circumstances and for the sole purpose of raising some funds for the purpose of momentarily supplying him with food and shelter, this defendant bethought himself of the expedient of raising such funds as his necessities demanded on the strength of the credit implied by his already vested interest in the said sum of \$2,352.37, the right to the possession and disposition of which would immediately devolve upon this defendant on the death of his then Uncle Mr. Charles H. Carroll, who had already attained the mature age of more than sixty-six (66) years and was at the time of the transaction in question and for a long time prior thereto had been in an infirm condition of bodily health.

Thereupon this defendant, on the recommendation of some person or persons whose identity he is at this time unable to recall, applied to one Nathan H. Baker, who was engaged in carrying on a real estate and brokerage business at 1333 F street N. W., in the City



of Washington, but with whom this defendant had never theretofore had any personal acquaintanceship or business relations, to assist in raising some money upon the strength of the credit aforesaid, and to that end authorized said Baker to open negotiations in such quarters or directions as he might be advised for the sale of his interest in said abated legacy or for a loan on the security thereof, the principal sum of said legacy as abated having already been ascertained and declared to be \$2,352.37, said amount not being subject to reduction by any contingencies known or otherwise. Said Baker, on this defendant's request, undertook the business and shortly thereafter informed this defendant that he could effect an exchange of his interest in said legacy for a certain lot of land said to be situated in the City of Baltimore, which proposition was not satisfactory to and was promptly rejected by this defendant for the reason, as said Baker was then and there informed, that ready money alone could relieve the pressing necessities of this defendant, and that he had no use for the land and no knowledge of its value. Thereupon, said Baker proposed to obtain for the use of this defendant on the strength of the security of his interest in said legacy amounting as aforesaid to the sum of \$2,352.37 a loan of five hundred dollars (\$500.00) to be reduced by a certain commission to be paid to said Baker out of said sum of \$500.00 for his services, which proposition was satisfactory to this defendant and was accepted by him, and subsequently said Baker tendered to this defendant for his signature a paper writing which this defendant did sign and redeliver to said Baker in the words and figures following, to wit:

Nov. 11, 1905.

For value received I assign all my right, title and interest in the estate of the late Sally S. Carroll the said interest consisting of a three sevenths interest in a certain Deed of Trust given on the property known as 1801 F street North West, Washington, D. C. the said deed of trust having been given by Hon. M. W. Fuller and Mary E. Fuller his wife to secure the payment of -7,841.24 cents My interest in the above Deed of trust amounting to three sevenths of the above amount I assign to C. B. Hight in consideration of the payment of \$75 in hand this day paid me by his authorized Agent N. H. Baker. The said C. B. Hight agrees to deed to whomsoever I may designate a deed for a certain lot located on Raynor Avenue Baltimore Maryland, and also agrees to loan me in addition to the sum received from N. H. Baker a further amount of \$425 the said Five Hundred Dollars to be secured to the — C. B. Hight by a first deed of trust on the Raynor Avenue lot.

It is understood that the said interest that I am here selling is sold subject to a life estate in the said Trust given by M. W. Fuller and wife. The said life interest being held by my uncle Charles Carroll who was born in the year of 1839.

In witness to the above I set my hand and seal.

CARROLL MERCER. [SEAL.]

Witness:

N. H. BAKER.

At the time of the execution and delivery of said paper writing which was tendered to this defendant by said Baker who was then and there, as is therein stated, acting as the authorized agent  
43 of said C. B. Hight, this defendant was not fully advised as to its legal import and his necessities were such and so pressing that he did not take time to fully consider the possible effect and meaning of the terms of said instrument when taken together, but signed said instrument without question in the form in which it was presented to him, and in the understanding that unless same was signed as presented he would not be able to otherwise obtain the promised loan of \$500 therein provided for.

And although this defendant did so sign and deliver to said Baker, as agent for said Hight said paper writing as aforesaid the said loan of \$500 therein promised was not made to him and no money on account thereof was at any time paid to him but on the contrary said Baker subsequently informed this defendant that said Hight was not satisfied with the form in which said paper writing was drawn and was also unwilling to advance to this defendant by way of loan or otherwise so large a sum as \$500 on the security of his said interest in the legacy aforesaid and thereupon said Baker tendered to this defendant for his signature and in substitution of the paper writing next above referred to and of the transaction therein set forth two other paper writings purporting to evidence a new and different transaction to be consummated by and between said C. B. Hight and this defendant, the first of which said paper writings as the same was tendered to this defendant for his acceptance and signature was in the following words and figures, to wit:

"This Agreement, Made this 16th day of November in the year  
One Thousand nine hundred and five by and between Carroll  
44 Mercer of the City of Washington, District of Columbia, party  
of the first part and Clarence B. Hight of the same place,  
party of the second part:

Whereas, The said Hight has this day loaned to the said Mercer the sum of Two hundred and seventy five dollars, (\$275.00) the receipt of which the said Mercer hereby acknowledges.

Now Therefore, The said Hight hereby agrees upon repayment of the said sum of Two hundred and seventy-five dollars (\$275.00) with interest at the rate of six per cent. from date to the time of said repayment, provided same shall occur within the period of twelve months from the date hereof, and in that event only, to deed to the said Mercer in fee simple and without encumbrance of any sort, the lot of ground situate lying and being in Baltimore City, state of Maryland and described as follows, that is to say: beginning for the same on the south side of Rayner Avenue at a point, from which a line drawn at right angles to Rayner Avenue would comprise the easternmost line of the lot now being described and the westernmost line of the lot adjoining to the eastward, said beginning being at — the distance of twelve hundred and seven feet and two inches easterly from the Southeast corner of Rayner Avenue and the Bloomingdale Road, and running thence southerly at right angles with Rayner

Avenue one hundred and thirty feet to an alley twelve feet wide; thence westerly binding on the north side of said alley one hundred feet; thence northerly at right angles with Rayner Avenue  
 45 one hundred and thirty feet to Rayner Avenue, and thence easterly binding on the south side of Rayner Avenue one hundred feet to the beginning.

Witness, The hand and seals of the parties hereto, this day and year first above written.

\_\_\_\_\_. [SEAL.]  
 \_\_\_\_\_. [SEAL.]

Test:

\_\_\_\_\_.

Which said paper writing this defendant, while still under the stress of the circumstances above referred to, signed and delivered to said Baker still acting as the authorized agent of said Hight and also at the same time signed, acknowledged and delivered to said Baker as such agent for said Hight the further paper writing referred to in said paragraph six of complainant's said bill of complaint as annexed thereto, and marked "Exhibit No. 2." That said writings seemingly satisfied said Hight and subsequently said Baker paid to this defendant on account of the transaction evidenced thereby the sum of \$240.00 saying the difference between said sum and the amount of \$275.00 mentioned, viz: \$35.00, was due to him (said Baker) as his commission.

This defendant is informed and believes and therefore avers that the said two contemporaneous paper writings when read and considered together as they were intended and ought to be, evidence solely and only and at most a loan from said Hight to this defendant of the sum of \$275.00, repayable together with interest at the rate of six  
 46 per centum per annum to said Hight on or before the 16th day of November 1906, secured on or by the assignment of this defendant's interest in the said sum of \$2,352.37 ascertained as aforesaid.

That acting upon such understanding and belief this defendant on or about the 15th day of November A. D. 1907 requested his co-defendant John Marshall Brown to pay over to said Hight out of the sum of \$2,352.37 aforesaid then and now in said Brown's possession the said sum of \$275.00 with interest thereon at six per centum per annum for the period of one year and the sum thereof, viz: \$291.50, as this defendant is informed and believes and therefore avers was by one Frederic D. McKenney acting by direction of said John Marshall Brown and on behalf of this defendant tendered to said complainant Hight who declined to accept the same as will the more fully appear from an inspection of certain letters which passed between said McKenney and said Hight on the subject, copies of which letters are annexed hereto and made a part hereof as though set forth at length herein, said copies being marked Exhibits Nos. 1, 2, 3 and 4.

7. Concerning the averments of fact contained in paragraph seven of complainant's bill of complaint this defendant has no knowledge

but as the truth of such averments appears by reference to the answer of his co-defendant John Marshall Brown heretofore filed in this cause to be admitted, this defendant for the purposes of this case admits the same to be true.

8. This defendant admits that his uncle, Charles H. Carroll, died in the city of Dayton, State of Ohio, on or about the 14th day of January, 1906, but with respect to the remaining averments  
47 of fact contained in paragraph eight of complainant's said bill of complaint this defendant has no personal knowledge, but it appearing from the answer of his co-defendant, John Marshall Brown, heretofore filed in this cause that same are admitted to be true, this defendant also for the purposes of this case admits such averments of fact to be true.

9. This defendant admits as matter of mixed fact and law that the said sum of \$2,352.37 payable under the provisions of the will of Sally S. Carroll, deceased, became due and payable to this defendant within a reasonable time after the death of said Charles H. Carroll, but this defendant denies that by virtue of the alleged assignment referred to in complainant's said bill of complaint, or otherwise, said complainant is entitled to receive and collect from the defendant John Marshall Brown either as executor, or trustee, or otherwise, said entire sum of \$2,352.37, but on the contrary denies that said complainant is entitled as of right to collect by virtue of said assignment or of the contemporaneous paper accompanying the same and hereinbefore set forth at large any of the said \$2,352.37, except perhaps the sum of \$291.50 specifically referred to in paragraph six, ante, of this defendant's answer, which said amount this defendant has heretofore authorized the said defendant John Marshall Brown to pay over to the said complainant and which said sum this defendant hereby tenders himself as ready and willing to pay to said complainant upon the order of this Honorable Court, or otherwise.

48 And this defendant having thus fully answered, prays that the complainant upon the receipt by him of the said sum of \$291.50 may be ordered and decreed to surrender up the alleged assignment from this defendant to the said C. B. Hight, annexed to complainant's said bill of complaint and marked Exhibit No. 2, for cancellation, and that this defendant may be hence dismissed with his reasonable costs in this behalf expended.

CARROLL MERCER

CITY OF NEW YORK,

*State of New York, ss:*

I, Carroll Mercer, being first duly sworn on oath depose and say that I am the identical person whose name is signed to the foregoing and annexed answer to be filed in the cause pending in the Supreme Court of the District of Columbia entitled "Clarence B. Hight, complainant, vs. John Marshall Brown, defendant, in equity No. 26,799"; I have read the foregoing and annexed answer and know the contents thereof and the matters and things stated therein upon

my own knowledge are true and those stated upon information and belief I believe to be true.

CARROLL MERCER.

Subscribed and sworn to before me this 12th day of July A. D. 1907.

[SEAL.]

JOHN KEIM, JR.,  
*Notary Public, N. Y. Co.*

F. D. McKENNEY,  
J. S. FLANNERY,  
*Solicitors for Defendant, Carroll Mercer.*

49

EXHIBIT C. M. No. 1.

Copy.

Law Offices of Wayne MacVeagh, Frederic D. McKenney, John Spalding Flannery, William Hitz, 1317 F Street N. W., Washington, D. C.

NOVEMBER 14, 1906.

Clarence B. Hight, Esqr., Colorado Building, Washington, D. C.

DEAR SIR: By direction of Mr. Carroll Mercer I hand you here-  
with Two hundred and ninety dollars (\$290.00) in United States  
Treasury Gold notes together with One dollar and fifty cents (\$1.50)  
in United States Silver coin, making in all the total sum of \$291.50,  
in full repayment of the sum of \$275.00 loaned by you on or about  
November 16, 1905 to Mr. Mercer, and interest thereon at the rate  
of six per centum per annum for the period of one year from that  
date. Mr. Mercer also directs me to return to you the enclosed  
paper writing dated November 16, 1905, signed by yourself and  
which among other things refers to the above mentioned loan, and  
he requests me to say that without reservation of any sort or kind  
he neither has nor at any time has made claim of any right, title  
or interest in or to the property situated in the City of Baltimore,  
State of Maryland, therein particularly described, and further, in  
order that you may be under no embarrassment whatever in that  
regard by reason of the terms of the above mentioned paper  
writing, he hereby waives and disavows any claim or interest  
of any sort or kind which he might otherwise, by reason of  
the terms of said paper writing, be supposed to have in said prop-  
erty.

Mr. Mercer has also forwarded to me your letter to him of Oc-  
tober 19, 1906, which, in view of the above, would seem to require  
no answer on his part beyond the acknowledgment of its receipt.

In view of the above you are at full liberty to avail yourself of the  
opportunity to make the advantageous sale of said property referred  
to by you therein.

Kindly favor me with an acknowledgment of receipt of the above  
mentioned sum of \$291.50, and greatly oblige,

Yours very truly,

F. D. McKENNEY.

Enclosures I.

4—1976A

51

## EXHIBIT C. M. No. 2.

Copy.

Law Offices of Wayne MacVeagh, Frederic D. McKenney, John Spalding Flannery, William Hitz, 1317 F Street N. W., Washington, D. C.

NOVEMBER 16, 1906.

Clarence B. Hight, Esqr., Colorado Building, Washington, D. C.

DEAR SIR: Mr. Hitz having reported to me that you had declined to receive the sum of \$291.50 in currency which on yesterday I tendered to you through Mr. Hitz on behalf of Mr. Carroll Mercer in full repayment of the sum of \$275.00 loaned by you to Mr. Mercer on or about November 16, 1906, with interest thereon at six per centum per annum for one year from said date, I now hand you herewith as a second tender of the payment of said loan and interest a certified check on the Commercial National Bank of this city payable to your order for the said sum of \$291.50.

By direction of Mr. Mercer I also hand you herewith the paper writing dated November 16, 1905, signed by yourself, and which among other things refers to the above mentioned loan, together with a carbon copy of my letter of yesterday addressed and delivered to you, and accompanying the aforesaid tender of money by Mr. Hitz, which letter more fully discusses the matter of the aforesaid loan and paper writing.

Yours very truly,

F. D. McKENNEY

Enclosures I

52

## EXHIBIT C. M. No. 3.

Copy.

Clarence B. Hight, Real Estate Investments, Colorado Building.

WASHINGTON, D. C., *November 15, 1906.*

Mr. F. D. McKenney, 1317 F St., N. W., Washington, D. C.

DEAR SIR: I have to acknowledge receipt, by courtesy of Mr. Wm. Hitz, of your letter to me of November 14, 1906; also by special delivery, of your letter to me of November 15, 1906 together with carbon copy of your above mentioned letter of November 14; also original agreement between Carroll Mercer and myself; also certified check on the Commercial National Bank of this city for Two Hundred and Ninety-one and 50/100 Dollars (\$291.50), which I am unable to accept for the same reason that I declined the currency when tendered me yesterday by Mr. Hitz, because said tender was made by Mr. Hitz under terms set out in your accompanying above mentioned letter of November 14, 1906 and not tendered me in accordance with the terms of the agreement existing between Carroll



Mercer and myself. I therefore beg to return you herewith said certified check for Two Hundred and Ninety-one and 50/100 Dollars (\$291.50); also carbon copy of your letter to me of November 14, 1906; also original memorandum of agreement between Carroll Mercer and myself.

53 I furthermore beg to state that I am ready and prepared to deliver to you as representative of Carroll Mercer, a deed in fee simple to the lot in the city of Baltimore, State of Maryland, described in the said agreement between Carroll Mercer and myself, upon receipt by me of the money loaned Carroll Mercer upon the security of said lot, provided said money is paid to me in accordance with terms of said agreement.

Very truly yours,

C. B. HIGHT.

54

EXHIBIT C. M. No. 4.

Copy.

Law Offices of Wayne MacVeagh, Frederic D. McKenney, John Spalding Flannery, William Hitz, 1317 F Street N. W., Washington, D. C.

DECEMBER 8, 1906.

Clarence B. Hight, Esq., Colorado Building, Washington, D. C.

DEAR SIR: Your favor of the 15th ultimo with enclosures as therein specified was received at this office in due course but owing to my absence from the city and the subsequent pressure of other affairs, acknowledgment of receipt has been unduly delayed.

It was not my intention by the terms of either of my letters referred to in your communication to impose upon you in connection with the acceptance of the sum of \$291.50, which amount I understand is admitted by Mr. Mercer to be due to you on account of the loan referred to in the so-called agreement of November 16, 1905, any terms or conditions whatever and I hereby notify you that by Mr. Mercer's request and direction I hold the duly certified check No. 56 of William Hitz on the Commercial National Bank payable to your order for said sum, which check will be delivered to you or upon your order at any time without conditions other than that the same is to be received by you in full repayment of the loan

55 from yourself to Mr. Mercer referred to in the above mentioned letter to me.

With respect to so much of your said letter as informs me that you are ready and prepared to deliver to me as the representative of Carroll Mercer a deed in fee simple to the lot in the City of Baltimore, State of Maryland, described in the above mentioned paper writing, I would say that I am not authorized by Mr. Carroll Mercer to accept in his interest or on his behalf any such deed unless otherwise instructed by Mr. Mercer, I should decline to accept any such deed, if it should be tendered to me.

Yours very truly,

F. D. MCKENNEY.

C.

*Replication to Answer of Carroll Mercer.*

Filed July 18, 1907.

In the Supreme Court of the District of Columbia, Holding Equity Court.

Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,

v.

JOHN MARSHALL BROWN, Defendant.

The complainant hereby joins issue with the defendant, Carroll Mercer.

HENRY S. MATTHEWS,

P. A. BOWEN, JR.,

*Solicitors for Complainant.**Suggestion of Death of John Marshall Brown, &c.*

Filed November 27, 1907.

In the Supreme Court of the District of Columbia.

In Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,

vs.

JOHN MARSHALL BROWN and CARROLL MERCER, Defendants.

Now comes Alida Catherine Brown, widow of John Marshall Brown, deceased, the person named as defendant in the above entitled cause and respectfully makes known to this Honorable

57 Court that the said John Marshall Brown died in the town of Falmouth, County of Cumberland, State of Maine, on or about the 20th day of July A. D. 1907, and that on or about the 3rd day of September A. D. 1907, the said Alida Catherine Brown was by the Probate Court of Cumberland County, State of Maine, the Honorable William M. Ingraham, Judge, duly appointed Executrix of the last will and testament of the said John Marshall Brown, deceased, as will more fully and at large appear from a duly certified copy of the Letters Testamentary issued to her by said Probate Court, which Letters your oratrix brings here into Court.

Wherefore the said Alida Catherine Brown, Executrix as aforesaid, prays that she may be substituted as a party defendant in the place and stead of the said John Marshall Brown, deceased, in the above entitled cause.

ALIDA CATHERINE BROWN,

By F. D. MCKENNEY,

*Her Attorney.*



We consent that Alida Catherine Brown, Executrix of John Marshall Brown, deceased, may be substituted as party defendant in the above entitled cause in the place and stead of said John Marshall Brown, deceased.

HENRY S. MATTHEWS,  
P. A. BOWEN, JR.,  
*Attorneys for Complainant.*

58      *Order Substituting Alida Catherine Brown as Party Defendant.*

Filed November 27, 1907.

In the Supreme Court of the District of Columbia.

In Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,

*vs.*

JOHN MARSHALL BROWN AND CARROLL MERCER, Defendants.

The death of John Marshall Brown, one of the parties named as defendants in the above entitled cause, having been suggested and it appearing to the Court that Alida Catherine Brown, widow of said John Marshall Brown, has been duly appointed executrix of the last will and testament of the said decedent by the Probate Court for Cumberland County, State of Maine, now therefore, upon motion first made and duly submitted to the Court on her behalf, it is this 27th day of November A. D. 1907, ordered that the said Alida Catherine Brown, Executrix of the said John Marshall Brown, deceased, be and she is hereby substituted in the place and stead of the said decedent as a party defendant in the said cause.

ASHLEY M. GOULD, *Justice.*

59      *Testimony on Behalf of Complainant.*

Filed September 10, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 26799.

CLARENCE B. HIGHT

*vs.*

JOHN MARSHALL BROWN.

WASHINGTON, D. C., *December 2, 1907,*  
Monday, at 3 o'clock, p. m.

Met, pursuant to notice, at the office of Henry S. Matthews, Esq., No. 1415 G street, Northwest, to take testimony on the part of the complainant in the above entitled cause.

Present: Henry S. Matthews and P. A. Bowen, Jr., Esqrs., Solicitors for the complainant; Frederick D. McKenney, Esq., Solicitor for the defendant; the complainant Clarence B. Hight, and the Examiner.

Whereupon NATHAN H. BAKER, called as a witness on the part of the complainant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. MATTHEWS:

Q. Mr. Baker, during the months of October and November, and during the fall of 1905, where were you resident? A. Washington City.

Q. What was your occupation at that time? A. I was at that time a salesman in the real estate office of David Moore.

Q. Where was that located? A. I think the number is 1333 or 1328 New York Avenue. I don't remember the number now.

Q. What was the character of the business you were doing at that time? A. Salesman; real estate salesman.

Q. Mr. Baker, are you acquainted with the complainant and one of the defendants in this case, Clarence B. Hight and Carroll Mercer? A. Yes, sir.

Q. Do you know both of them? A. Yes, sir.

Q. Did you ever transact any business for either of those gentlemen? A. Yes, sir.

Q. Did you ever transact any business for Mr. Carroll Mercer? A. Yes, sir.

Q. And on how many occasions have you transacted business for Mr. Mercer? A. On one occasion.

Q. Will you state the character of the business that you transacted for him at that time? A. Do you want me to start in to say how the deal came up, and so forth?

Q. What you were employed to do, or if you were employed to do anything? A. Well, sometime in the month of October, I don't know exactly the date, Mr. Mercer was employed in the Moore real estate office as clerk, and he spoke to me of an interest he had in an estate, I think it was of his grandmother.

Q. Do you remember what her name was? A. It was either Carroll or Mercer; I believe it was Carroll.

Q. In his grandmother's estate? A. Well, he spoke more that the estate was mortgaged on Fuller's house—Chief Justice Fuller's house—that represented the estate.

Q. Was it the interest that he had in his grandmother's estate that he spoke to you about? A. I think so. I think that is—that is my understanding of it.

Q. What did he say to you in regard to that interest? A. Well, he wanted to dispose of it, and he wanted to know if I knew of any way he could dispose of it and get money out of it. He stated that it was a life estate—subject to a life estate of some relative, an uncle,

or some other relative; I think it was an uncle; and that he wanted to raise money on it in some way.

Q. That is, as to his interest in his grandmother's estate? A. Yes, sir. And he didn't seem to know about just how much the interest would be, but he told me he would get a statement, I believe, from an attorney here in the city. I believe it was McKenney.

Q. Now, where did this conversation take place? A. In David Moore's office.

62 Q. Did he instruct you as to what he should receive for this interest in this estate, or what he was willing to make sale of it for? A. Well, he said that he needed money awful bad, but he didn't know how long his uncle would live, and the money would do him more good now than maybe probably ten or fifteen years from now. He didn't put a price on it at all.

Q. Where did that conversation take place? A. At David Moore's office.

Q. Who was present at that time? A. Well, I don't think anyone was present. There is always several people in the office, but this conversation took place between Mr. Mercer and me, and I don't suppose anyone else was paying any attention to it.

Q. Did you endeavor to make any sale of that property? A. Not just at that time. I waited until he got the statement from his attorney.

Q. You mean a statement fully informing you as to the character of his interest? A. Yes, sir. As to the character of what?

Q. As to the character of this legacy? A. Yes.

Q. Now, Mr. Baker, I hand you a letter dated October 10th, 1905, addressed to Mr. Carroll Mercer, and signed by Mr. F. D. McKenney, and I ask you to state if that is the statement you have just referred to as to be contained in a letter promised you by Mr. Mercer? (Handing witness letter.) A. (After examining same.) To the best of my recollection, that is the letter that Mr. Mercer gave me.

63 Mr. MATTHEWS: I offer this in evidence.

(And the same is filed by the Examiner marked "Complainant's Exhibit No. 1.)

Q. Is that the letter that Mr. Carroll Mercer gave you? A. To my best recollection, yes, sir.

Q. Did he give you that letter before you endeavored to dispose of this interest in his grandmother's estate? A. Yes, sir.

Q. Mr. Baker, whom did you approach first in regard to a sale of this legacy in favor of Mr. Mercer, or a loan to be secured on that legacy? A. Thomas H. Pickford.

Q. Did you request a loan from Mr. Pickford? A. No; I tried to sell it to him.

Q. You endeavored to sell it to him? A. Yes, sir, outright, and wanted an offer.

Q. Were you successful in that? A. No, sir.

Q. What was the trouble? A. Well, he would not——

Mr. McKENNEY: Well, I object. Mr. Pickford's reason for that cannot affect this situation. It is *res inter alios*, anyway.

Mr. MATTHEWS: I didn't ask him what his reason was. I asked him what the trouble was.

Mr. McKENNEY: He started to give Pickford's reason, though, why he would not do it, in reply.

By Mr. MATTHEWS:

Q. Mr. Pickford was not willing to make a loan on that  
64 interest, was he? A. No, sir.

Q. Was he willing to buy it? A. No, sir.

Q. Whom did you next approach, Mr. Baker? A. I think I next approached Mr. Hight.

Q. Had Mr. Mercer made an effort, to your knowledge, to dispose of this interest before employing you? A. I could not tell, only what he said himself.

Q. What did he say? A. He said that he had been trying to raise money on it and dispose of it.

Q. Now, you said that you approached Mr. Hight in regard to this matter. Did you approach him as to a sale of this interest or——

Mr. McKENNEY: Oh, just a minute. Don't lead him. That is the very point here.

Q. (Continuing:) Well, I will ask you what the proposition was that you made to Mr. Hight? A. I simply presented the proposition to Mr. Hight with the letter that—this letter—and asked him to make an offer on it.

Q. Did you show Mr. Hight that letter? A. Yes, sir.

Q. Did Mr. Hight make an offer? A. Not the first time I went to see him, no. Nor I don't believe he did the second.

Q. About what time did you see Mr. Hight? A. Oh, I seen him  
two or three times.

65 Q. The first time, though, in regard to this matter? A.  
Oh, it was along the latter part of October or the first of November.

Q. And on the first visited he didn't make you any offer at all. A. He said he would look into it.

Q. Did he make you any proposition at any other time? A. Yes, sir; I least I thought he did.

Q. Will you tell me what proposition that was? A. Well, the proposition, as I understood it, that he afterwards would not carry out; that he would trade him a certain lot—his first proposition was that he would trade him a certain lot in Baltimore, on Rayner Avenue in Baltimore. That is the proposition he made. If you want me to go on why—he would trade him that lot clear of incumbrance for his interest in this mortgage on the Fuller house.

Q. What became of that proposition? A. Well, Mr. Mercer said he would not make the deal unless he could raise some money on the lot. He asked me the value of the lot and I told him I didn't know anything about the lot. Mr. Hight said the lot was worth \$800 to him. As far as the value was concerned, I knew nothing about it. I didn't have any idea of the value of Baltimore property, but he could easily find out.

Q. Did Mr. Mercer have the number of the lot and its location at that time? A. Yes, sir.

Q. Was any counter-proposition made to Mr. Hight? A. Well, the only counter-proposition was that Mr. Mercer would not make any deal for any real estate unless he could raise money.  
66 on the real estate.

Q. Now, to your recollection, was that proposition ever reduced to writing? A. No, I don't believe it was, not that proposition for a straight trade of the lot for the interest; no. It was simply a verbal proposition, the first proposition was.

Q. Did you submit to Mr. Hight the proposition of a loan on that Baltimore lot of \$500? A. I asked him about what he could borrow over there. Well, he said the lot was probably worth to him more than it would be to anyone else, because he could build on it, but he ought to be able to borrow \$300 on it.

Q. Mr. Baker, I show you paragraph 6, page 6, of the answer of the defendant Carroll Mercer in this cause, and would refer you to a copy of a paper dated November 11, 1905, and fully set out in said paragraph of said bill, and ask you to read that carefully. A. (The witness doing so.)

Q. Now, I would ask you, Mr. Baker, if that paper embodies the proposition which you have just referred to in your testimony. A. Yes, sir.

Q. Was that proposition assented to by Mr. Hight? A. Well, I thought so, but he would not go through with it.

Q. What was his objection? A. Well, he didn't want to loan that amount of money on the lot.

Q. Was any counter-proposition submitted in lieu of that  
67 proposition? A. Well, I went to Mr. Hight and told him what I had done, and he repudiated the whole transaction. I told him that I had already paid Mr. Mercer the money. Well, he said, rather than to make a loan of that kind under the circumstances, he would lose that amount of money that he had paid, rather than go through with the deal, or I would have to pay him the money back, which, of course, I did not intend to do.

Q. I understand you to say that Mr. Hight was not willing to carry out that proposition, as he was not willing to loan that amount of money on the Rayner avenue lot? A. Well, he was not the next day willing to do it.

Q. What did he say he was willing to do? A. Well, he said, I believe, he would loan \$275, or something like that, on the lot; something like that; I am not sure of the amount.

Q. Did you submit that to Mr. Mercer? A. Oh, I went back and tried to get the money I had paid him back. He had spent it.

Q. Did you tell him of Mr. Hight's willingness to loan \$275 on the lot? A. Yes, sir.

Q. Well, what did Mr. Mercer state as to that proposition. A. Well, he agreed to it.

NOTE. It is understood and agreed between the counsel for the respective parties that this deposition may be taken subject to objections

68 as to matters of substance, to be stated in writing, the particular matters objected to, prior to the submission of this cause for hearing.

By Mr. MATTHEWS:

Q. I will ask you again, did you submit Mr. Hight's proposition?

A. I did, sir.

Q. To loan \$275? A. Yes, sir.

Q. On the Mt. Rayner avenue property in Baltimore? A. Yes, sir.

Q. To Mr. Mercer? A. Yes, sir.

Q. What was done on that proposition? A. Well, it was accepted.

Q. By whom? A. By Mr. Mercer and by Mr. Hight both; agreed to make the deal.

Q. Did you attend to the negotiation of this matter? A. To the making of the contract?

Q. The signing of the papers, if any papers were signed. A. Well, I carried the papers to the different parties to sign; I didn't prepare them.

Q. Mr. Baker, I show you an original paper dated the 16th of November, 1905, purporting to be signed by Carroll Mercer, and by him acknowledged before Patrick J. Walshe, a Notary Public. I wish you to look at that paper. (Handing same to witness.) A. (After examining the same) To my best recollection that is the paper. That——

Q. No. Did you ever see that paper before? A. Yes, 69 sir, I believe I have.

Q. Was that one of the papers in the final consummation of this sale? A. Yes, sir.

Mr. MATTHEWS: I offer that paper in evidence.

(The same is filed by the Examiner marked "Complainant's Exhibit No. 2.)

Q. Mr. Baker, I show you another paper, purporting to be signed by Carroll Mercer and Clarence B. Hight, dated the 16th day of November, 1905, and ask you to look at that. (Handing witness paper.) A. (After examining same) Yes, sir.

Q. Did you ever see that paper before? A. Yes, sir.

Q. Was that the paper which was prepared to carry out the agreement of which you have just testified as to the loan on the Mt. Rayner Avenue property in Baltimore? A. There was no agreement to prepare this paper at the start at all; that came up afterwards; after they had made an agreement to trade.

Mr. MATTHEWS: I offer that paper in evidence.

(And the same is filed by the Examiner marked "Complainant's Exhibit No. 3.)

Q. Now, Mr. Baker, prior to the signing of those two papers, both dated November 16th, 1905, and just offered in evidence, as I understand from your testimony, Mr. Mercer and Mr. Hight had agreed, Mr. Hight to convey to Mr. Mercer the Mt. Rayner Avenue

lot in consideration of the legacy of which you have just  
70 talked. A. Yes, sir.

Q. Why was that proposition not carried out? A. Why wasn't it carried out?

Q. Yes. A. Well, Mr. Mercer wanted to raise money on the lot; that was the first proposition. He wanted to be sure that he could get the money on the lot before he would agree to make any kind of a deal.

Q. Did he offer to take title in himself to this lot? A. At first he did, yes.

Q. Did he take title to it. A. No, sir, not other than that contract there.

Q. When I say "take title- I mean receive a deed for it? A. Well, I can't tell. If you will let me go into it, you know.

Q. Well, I want you to go into it. A. Well, the question came up when the deeds—as to how it should be deeded, but when they had agreed to make a deal, why he wanted to know if his wife would have to sign the mortgage back, and I consulted with Mr. Moore and he said yes.

Q. What Mr. Moore was that? A. David Moore. He said yes. Well, he said he would not go to his wife for any favors, and wanted to know if there was a way around it, that he could go through with the deal and not have to go to her to sign the mortgage. I told him there was no way around it unless he could get some friend that he  
71 had confidence in to take the title to the lot, and then let *them* give the mortgage back on it, and there was a young man in the office—in Moore's office by the name of Barber. I guess that was not his name, but he goes under the name of Barber. He spoke to him about taking this title.

Q. Were you present at that time? A. Yes, sir, and the young man consented, you know, to take the title and give the mortgage back, and while he was discussing that with him Mr. Moore came in, and the young man, if I am not mistaken, turned and asked him in regard to it, and Moore advised him not to do it; advised him not to give a mortgage for some one else's debts; told him not to do it. I asked Mercer if he could think of any one else, and he said no; that would be willing to do it, you know, to take the title, and he said no, and then I suggested myself to draw up this contract, if he wanted to take that; if he wanted to accept it he could take a contract for the deed.

Q. That was the last contract that I have just showed you, or agreement? A. Yes, sir.

Q. Were any deeds prepared to carry out this original arrangement? A. Yes, sir.

Q. Prior to November 16th? A. I don't know that it was prior to November 16. I don't know that I seen them prior to that. I don't know when they were prepared.

Q. You have just stated that this transaction which you have just referred to took place prior to the signing of this contract  
72 of November 16th? A. I don't know when the deeds were made out, but they were here on the 16th or shortly afterwards.



By Mr. McKENNEY:

Q. What do you mean by "here"? A. In Washington. Deeds were prepared.

By Mr. MATTHEWS:

Q. Did you submit this mortgage that you have testified to to Mr. Mercer for his execution? A. No, it was not submitted to him, because he didn't want to go to his wife—send it to her or have her sign it.

Q. I understand, Mr. Baker, that you say you didn't tender any deeds to Mr. Mercer? A. No, sir. It was a question of whether it should be deeded to him on account of judgments, and his not wanting to ask favors of his wife came up, and he started to look out for some other way to close the deal, you know.

Q. Judgments against whom? A. Against Mr. Mercer.

Q. Then I understand you to state that Mr. Mercer, in your presence, applied to Mr. Barber to take title to this property? A. Yes, sir.

Q. Was Mr. Barber willing to take title to it? A. Yes, he was apparently so, yes, until Mr. Moore came in and advised him not to do it. He just simply told him not to do it; not to bind himself for some one else's debts; that he knew nothing about the lot or  
73 its value, or anything of the kind; a young man, and, of course, he refused to do it.

Q. Mr. Baker, during the entire transaction was there any representations made by you to Mr. Mercer that this was anything else than a sale of his interest? A. No, sir; rather a trade; an exchange of property.

Q. Was there any discussion as to the lien of judgments? A. Yes, sir.

Q. Upon this interest? A. Yes, sir.

Q. Between you and Mr. Hight, or anybody else? A. Well, the first discussion was—but you would not let me tell that a while ago.

Mr. McKENNEY: (To the witness.) Go ahead, Mr. Baker. The thing for you to do is to tell all you know about this. I don't want to interfere, Mr. Matthews, with your witness. I notice he said that two or three times, that you were holding him back.

Mr. MATTHEWS: No; I wanted him to keep perfectly free from any objection.

The WITNESS: Well, when I presented the matter to Mr. Pickford he said no, he didn't want any dealings with Mercer, because he held a judgment against him; he would not give ten cents for it; that was his remark, and I went back and told Mercer about it; that if that was the case the judgment would hold against this; that it would be a pretty hard proposition to get rid of at any price, after he told me himself, after I went back to him, that he had several  
74 thousand dollars worth of judgments against him, and we called up Mr. Moore and put the proposition up to him, and he said the judgments would hold good against his interest. And when I presented the proposition to Mr. Hight I told him about the judgments, and he referred it to his attorney, and was willing to go on and to make the deal regardless of the judgments.



## Cross-examination.

By Mr. McKENNEY:

Q. Mr. Baker, you have been about Washington here for a number of years, haven't you? A. I was here for about six years.

Q. Up to about what time? A. Up until about May a year ago. A year ago last May.

Q. And prior to a year ago last May you had been about Washington here engaged in business for about five or six years? A. Yes, sir.

Q. What kind of business were you engaged in? A. Well, I was first here in the government service.

Q. And afterwards—— A. Real estate.

Q. And how long were you engaged in the real estate business? A. Well, I guess about three years.

Q. During how much of that time were you concerned with Moore and Hill? A. I was not concerned with Moore and Hill at all.

Q. I understood you to say on your direct examination that you were a salesman employed by Moore and Hill? A. No, by  
75 David Moore.

Q. Oh, by David Moore? A. Yes, sir.

Q. Well, that was, then, after the dissolution of the firm of Moore and Hill, that is after David Moore drew out of the firm of Moore and Hill? A. Yes, sir.

Q. So that at the time of this transaction with Mercer and Mr. Hight, to which you have been testifying, you were employed as a salesman by Mr. David Moore? A. Yes, sir.

Q. And how long had you been employed in that capacity? A. Well, Mr. Moore started up just about, I think, the latter part of September—sometime in the fall, and I went in to his office about two or three weeks after he started; it was two weeks probably; a short time after his dissolution.

Q. With whom had you been engaged prior to coming in contact with Mr. David Moore? A. Myself.

Q. Where was your office? A. Corcoran Building.

Q. Now, how long had you known Mercer? A. I never knew Mercer until I went to Mr. Moore's office.

Q. So that sometime in the latter part of September you——

A. Well, he came in after I went in there, I believe. He  
76 came in there as a clerk, in the office, sometime in October.

Q. Well, now, "as a kind of a clerk." What do you mean by that? A. Well, he didn't seem to have much to do, if anything, except to meet people in the office and take their names and find out what they wanted, and that is about all he had to do.

Q. Was he there on a salary or commission basis, do you know? A. I presume he was there on a salary; he was not selling real estate.

Q. You don't know about that? A. No, I don't know about that.

Q. You had never known Mercer, you say, before that? A. No, sir.

Q. Did you know anything about him? A. No, sir.

Q. Did you know where he was living at that time? A. No, sir.

Q. Did you make any inquiries about that? A. At the time that this deal was going on?

Q. Yes. A. No, sir, I didn't know at that time; not at all.

Q. Now, how long had you known Mr. Hight? A. Mr. Hight, I should judge, six or eight months; probably not that long.

Q. Prior to this transaction, had you had any prior dealings with Mr. Hight—any business transactions? A. Well, I tried to  
77 make several deals with him, but could not do it, and had a deal on at that time.

Q. You had been at one time, during some five or six months prior to the time when you met Mercer, having business dealings of some sort or other with Mr. Hight? A. Well, I simply tried to make deals with him, the same as I did with anyone else, you know. If I had a cheap piece of property I would go to him, as well as to other buyers, in the town; vacant property. I had submitted several deals to him, I believe, before that time, but he turned them all down.

Q. Had you ever done any business for Mr. Hight at his suggestion? A. No, sir, not up to that time.

Q. Not up to that time? A. No, sir.

Q. What class of business was that that you were trying to do with Mr. Hight? A. Well, run across a cheap piece of ground, vacant ground, I would try to sell it to him.

Q. Had you endeavored to sell him notes, or anything of that sort? A. No, sir.

Q. Is Mr. Hight known to be in the market for the purchase of notes—promissory notes? A. Well, he was known to be a speculator.

Q. In what respect was he speculating? A. Well, he would take chances on real estate.

Q. Did you ever know him to take chances on anything  
78 else? A. No, I never knew of it.

Q. Well, now, what had been your relations with Mr. Hight up to the time of this Mercer transaction? A. In what way do you mean, Mr. McKenney?

Q. Well, personally. A. Well, I simply knew him; that was all; knew that he was a builder here in the city, and had bought a good deal of vacant ground, and whenever I would run across a cheap piece of ground, why I would simply present it to him, as I did to other buyers of vacant property.

Q. Well, have you any interest of any sort or kind in this transaction? A. No, sir.

Q. You have no wish for anything other than that the full and exact facts concerning the transaction may be disclosed on this record? A. No, sir, I have not.

Q. And you have no concern with the outcome of it? A. No, sir.

Q. When Mercer first spoke to you about being hard up, as I understood it, what did he say to you? A. Well, he said that he was simply hard up, and he was ashamed to meet his friends here on the

street, and I believe he mentioned there was a gentleman right over here across the street; I knew his name; I had met him just like I had Mr. Hight—well, he said he went down the back way to his boarding-house or rooming-house, rather than meet his friends, on account of the condition of his clothes.

79 Q. Did he tell you where he was rooming? A. No. I didn't find out until some time afterwards, after the deal was closed; in fact a couple of months afterwards, and I didn't know then that he was rooming at the same place as when he was working for Mr. Moore.

Q. Well, you say that he said he was ashamed to meet his friends because of the condition of his clothes? A. Yes.

Q. Did he say that he was living in a hall room? A. No, sir.

Q. Did he say that he was pressed for money with which to get food? A. No, sir. I presumed that he was getting sufficient salary there to pay for his room and to buy something to eat.

Q. But he indicated that he was not getting anything to pay for clothes? A. Not according to his idea, no.

Q. Then he told you that he had this interest in his grandmother's estate? A. Yes, sir.

Q. But this, I understood you to say, he told you was subject to the life interest of some relative? A. Yes, sir.

Q. And he asked you to see if you could raise some money for him? A. Well, he asked me to dispose of it; he wanted money.

Q. And to get that money in any way he could? A. Well,  
80 he wanted to dispose of it; to raise money, yes.

Q. Did he indicate to you that he wanted to sell it as a sale outright? A. He was willing to sell or anything.

Q. Well, he did ask you if you could raise any money on it—borrow any money on it? A. No, he didn't ask to borrow any money on it at all.

Q. He said he wanted to raise money on it in some way? A. Yes, sir, or to sell it. I, of course, expected to sell it.

Q. And he said sell it, or any other way? A. Yes, sir, I believe he did. I believe that is what he did.

Q. Well, now, you say when he first spoke to you, you said that his information about it was not sufficient? A. No, sir, it wasn't.

Q. And you could not do anything with it—— A. (Interposing:) I could not start out on a deal on it and talk with any intelligence regarding the deal, because he knew so little about the condition of his interest.

Q. Then you obtained further information concerning it? A. Yes, sir.

Q. And you understood he was about to communicate with some attorney here? A. Yes, sir. He afterwards told me who it was.

Q. On this occasion he didn't tell you who it was? A. He didn't tell me who it was. He told me he would get me information  
81 that I could start out on the deal with, you know.

Q. Now, how long after that was it before he next spoke to you about it? A. Well, just as quick as he got the information.

Q. Well, how long do you think that was? A. Oh, it could not have been over ten days, probably.

Q. In the meantime, nothing had been said between you and him with regard to it? A. Well, he kept talking about being broke, that was all.

Q. What did he say about that, about being broke? A. Well, he seemed to be a man who had considerable money at one time, and he talked a great deal about it, and that is about all there was to it.

Q. He talked about what he had had? A. What he had had, yes. What he had been used to, you know.

Q. And indicated to you that he did not have it any more? A. Yes, sir.

Q. And did he tell you he owed money in various directions? A. He didn't speak at all in regard to that except in regard to the judgments; that there was several thousand dollars worth of judgments against him.

Q. What did he tell you about his prior condition of life—you say he talked to you about that? A. Well, he didn't talk very much about it, except that he had been in good circumstances, and  
82 I understood that his wife was still in good circumstances, but he would not ask any favors from her. He spoke about a little girl, I believe, that he had in school up in Philadelphia, and I took it for granted that his wife was well off.

Q. You understood they were living apart? A. Yes, sir.

Q. Did you know anything about his personal habits? A. No, sir.

Q. Was he a drinking man as far as you knew? A. I didn't know it until—as far as I know—I know now that he is a drinking man, only from hearsay.

Q. You have heard since that he was a drinking man? A. Yes, sir.

Q. Well, now, about ten days after this first interview he submitted to you this letter, which you have identified, and which has been offered in evidence, signed by F. D. McKenney? A. Yes, sir.

Q. Did you ask him for any further information than that contained? A. I don't believe that I did, unless it was—well, I don't believe I asked him for any further information at all.

Q. Well, when he gave you the letter, what did you do? A. I took the letter over here to Pickford.

Q. What made you go to Pickford? A. Well, Pickford will take chances on propositions of that kind, that is why.

83 Q. You knew that there was some chance involved in the matter? A. I thought so, yes.

Q. Did you ask him anything about this relative or uncle? A. He said he knew nothing about him; he thought he was in Montana.

Q. He didn't know where he was? A. Yes.

Q. Did you ask him about his age? A. Yes; I believe the letter stated his age.

Q. Well, look at that letter and see. A. (After referring to letter.) I must have gotten it from him now.

Q. You have looked at the letter and you know that that does not contain it? A. No, it does not contain it, but I got the information some place; whether he telephoned some one and gave it to me or not, I don't know.

Q. But you probably got the information about his uncle's age from himself? A. Yes, sir.

Q. What did he tell you about his uncle's health? A. Well, he didn't seem to know very much about him.

Q. Well, now, then, armed with that letter, as I understand it, with the information obtained from Mr. Mercer as to his uncle's age, you went to see Pickford? A. Yes, sir.

84 Q. What did you suggest to Pickford? A. Well, I simply submitted a proposition of buying it.

Q. Well, but did you put any price on it? A. I wanted him to put a price on it.

Q. You asked Pickford what he would give for it? A. Yes, sir.

Q. Was that it? A. Yes, sir.

Q. Did you ask Pickford what he would loan on it? A. No, I believe not.

Q. Now, are you sure you didn't ask Pickford what he would loan on it? A. I am sure of it, because I never tried to get him to loan anything. I sold him a good many things.

Q. Pickford declined to do anything? A. Yes, sir.

Q. Because he had a judgment? A. He claimed to have a judgment against Mercer.

Q. You went back to Mercer and told him you could not sell it to Pickford? A. I told him I didn't believe I could sell it at all, after I heard about the judgment.

Q. Did you tell him you could not raise money on it in any way? A. After we had a talk with Moore, he said he thought the judgment would hold against this interest.

Q. And on that occasion you say that Mercer told you there were several thousand dollars in judgments against him? A. Yes, sir.

85 Q. Did he go into details about those judgments? A.

Only one day there was a party who came in the office, I have forgotten his name, and he said he had got mixed up in a real estate deal out on Brightwood Avenue, I believe it was a building deal, and through the dealings with this party who came into the office there, he got several thousand dollars of judgments against him, and he claimed that the other fellow had done him.

Q. Now, up to that time, Mercer had not suggested any real estate transaction for this interest? A. I believe I suggested it; might make a deal with some one to raise money on the real estate.

Q. As a possibility? A. Yes, sir.

Q. Did you have that in mind when you went to Pickford? A. Yes, sir.

Q. Did you submit that to Pickford? A. No.

Q. Up to that time had Barber figured in the matter in any way? A. No, sir.

Q. Well, now, after you had this conversation with Mercer in which, as you say, you stated to him that you did not believe you could do anything with this interest, on account of the judgments, and so forth, what did you next do? A. Well, he kept after me to see if I could not do something with it.

86 Q. Did he tell you he had to have money? A. Yes, he told me he had to have money.

Q. Did he tell you what he wanted with it? A. No. He seemed to think more of clothes. That was the first thing he done with the \$75., he bought some clothes.

Q. Now, then, what did you do, after he kept after you? A. Well, I went to Mr. Hight and told him the circumstances about the judgment, and I believe he submitted it to his lawyer, Mr. Bradley.

Q. To Mr. Bradley? A. Yes, as to whether the judgments would hold against this interest.

Q. Did you speak to Mercer before you saw Hight, did you speak to Mercer about Mr. Hight? A. No, I believe not.

Q. You don't recall having told him that you were going to see Mr. Hight about this matter? A. No, sir.

Q. What arrangement, if any, was there between Mercer and yourself, with respect to your compensation? A. There was no arrangement.

Q. Up to that time there had been none at all? A. No, sir.

Q. Then you went to see Mr. Hight? A. Yes, sir.

Q. And what did you submit to Mr. Hight? A. Well, I submitted just the same as I had to Pickford. I believe I showed him this letter and asked him to investigate it, and told him about  
87 the judgments, and he submitted it to his lawyer Bradley.

Q. How long afterwards did you see him again? A. Well, it may have been a day or so, you know.

Q. Well, when you saw him again, did he send for you? A. No; I believe I went after him.

Q. What did he say to you? A. Well, he said he would not buy it. He said he had a couple of lots over in Baltimore, and he would take a chance in that way on the interest.

Q. That is, he would trade the lots for the interest? A. Yes, sir.

Q. And those are the same lots that you referred to in your direct examination, in which Mr. Hight said that the lots were probably worth \$800.? A. He said they were worth \$800. to him, yes, sir.

Q. He also said they were probably worth more to him than they would be to anybody else? A. Yes, sir.

Q. Then did you go back to Mercer with the suggestion to trade the lots for the interest? A. I did, yes, sir.

Q. And I understood you to say on your direct examination that Mercer said the lots were no good to him? A. No, he didn't say that. He said they were no good to him unless he could raise money on them.

88 Q. And up to that time there had been no suggestion of raising money through Hight on these lots? A. No.

Q. As I understood you to say, the suggestion with respect to trading the lots for the interest in this estate was never reduced to writing? A. No, sir.

Q. Of any sort? A. No, sir, that is, not as I remember.

Q. After Mr. Mercer said that the lots were no good to him unless he could raise money on them, what did you do then? A. I got the



number of the lots and gave them to Mr. Mercer, and he was to investigate, write to Baltimore, and I believe I suggested the name of some one over there in Baltimore, to whom he was to write, to see if he could raise any money on the lots.

Q. Do you know whether he did that or not? A. I don't know whether he did or not.

Q. Well, what did you do next about it? What was your next move in the transaction? A. My next action, I believe, was to go back to Mr. Hight and tell him Mr. Mercer said that he would not trade for any real estate unless he could borrow money on it.

Q. Well, do you know how long that conversation with Hight was after Hight had said to you that he would trade the lots for the interest? A. Oh, that was probably the same day; probably the same morning, you know.

Q. Then, of course, Mercer hadn't written to Baltimore between the time Hight had proposed to trade the lots for the interest  
89 and the time you went back to Hight, saying that Mercer said that the lots were no good to him unless he could raise money on them? A. No, he hadn't written, but I had got the number of the lots, you understand. I had got the number of the lots for him to investigate.

Q. Now, on this second interview, on the same day, with Hight, in which you told him that Mercer said the lots were no good unless he could raise money on them, did you make any suggestion to Hight with respect to making a loan on the lots? A. Yes, sir.

Q. What was that? A. Well, I asked him what could be borrowed on the lots over there in Baltimore, and I think he said probably \$300 could be borrowed on the lots. I asked him if he would make a loan, and I believe he said that he would not make it.

Q. He said he would not? A. Would not make it, yes.

Q. Said he would not make it? A. Yes, sir.

Q. Well, then, you went back and reported to Mercer that Hight would not loan the money on the real estate? A. Yes, sir.

Q. Then what did Mercer say? A. Well, Mercer was to write to Baltimore to see if he could not borrow the money.

Q. You don't know whether he did that or not? A. No,  
90 sir, I don't know whether he did or not.

Q. When did you next see Hight about it? A. Well, it was shortly afterwards; probably the next day.

Q. You went back to Hight the next day. And what occurred on that occasion? A. Well, Mr. Hight was—Mr. Hight then, if I am not mistaken, had got some kind of a report from Mr. Bradley in regard to the judgment. You see you can't remember all those things.

Q. I know you can't, but do it the best you can. A. You don't want to get balled up on it; you want to tell the facts. I think he got some kind of a report from Bradley which changed his opinion as to whether he would make the loan or not. Then the question of him making the loan came up.

Q. Do you know what the effect of the opinion was that Mr. Hight got from his lawyer, Mr. Bradley?

Mr. MATTHEWS: Of course, I will object to all these things, you know.

Mr. McKENNEY: Well, that is all right.

Q. (Continuing:) What did Mr. Hight say to you? A. Well, I went after him to make the loan, and he was going to the races with Mr. Bradley, I believe. I told him I thought it was a good deal if the judgment would not hold, and he was in a hurry and he told me to go ahead and make the deal with him.

Q. Well, did you know that he had consulted Bradley? A. Yes, I know that he had consulted Bradley.

91 Q. You waited while he consulted Bradley? A. No. I went down with him the first time to show him this letter, and Bradley made some kind of an investigation, probably of the records over at the court-house.

Q. Well, when did Mr. Hight tell you that Mr. Bradley told him that the judgment would not hold? A. He telephoned to Mr. Bradley from his office, the time we went back and had some kind of a conversation.

Q. Over the telephone? A. Yes. Of course, I could not tell what the conversation was.

Q. But as a result of that conversation Mr. Hight told you to go ahead and make the loan? A. To make the deal.

Q. To make the deal? A. Yes. Now this is after Mercer wanted \$500., you see.

Q. Well, when did Mercer suggest \$500? A. Well, it was during this negotiation, backwards and forwards, that he would like to get \$500 out of it.

Q. That was after you had told him that Hight would trade the lots? A. That was when he was talking about borrowing \$500 on the lots in Baltimore. Well, I told him, if the lots were worth only \$800, he probably could not do it.

Q. And Hight had told you that the lots would stand \$300., anyway? A. Yes, sir.

Q. And you told Mercer that? A. Yes, sir.

92 Q. What did Mercer have to say about that? A. Well, he was to write to Baltimore.

Q. And you went back the next day? A. The chances are this was the same day; I was going backwards and forwards between them, right along.

Q. You went back then the same day? A. Probably it was the same day.

Q. And told Hight that Mercer wanted \$500, was that it? A. Yes.

Q. Well, what did Hight agree to then? A. Mr. Hight, I think, agreed to it, and told me to go ahead and make the deal, and gave me the money.

Q. How much money did he give you? A. \$100.

Q. To pay to Mercer on account of it? A. Yes, sir. I paid him \$75 and paid him \$25 afterwards.

Q. Hight told you to go ahead and make the deal? A. Yes, sir.

Q. You understood that Hight was going to loan \$500 and the lots were to be traded in for this interest? A. Yes, sir.



Q. And Hight gave you \$100 to go ahead and make the deal?

A. Yes, sir.

Q. You went back to Mercer? A. Yes, sir.

93 Q. And what did you tell Mercer? A. I told him he would make the loan. This was on the 11th, I think it was, or about that time.

Q. You told him what, now? A. That Hight would make that loan, and paid him \$75.

Q. You paid him \$75? A. Yes, sir.

Q. Why didn't you pay him the whole \$100? A. Because I went home. I went back to the office and Mercer was not there.

Q. Well, when did you see Mercer again? A. At David Moore's office.

Q. The next day? Q. No, the same day; the same afternoon.

Q. Now, when you paid him this \$75, what paper, if any, was drawn up in connection with this transaction? A. Well, I drew up a contract in regard to it.

Q. That was the contract of November 11th? A. Yes, sir.

Q. Which has already been identified by you? A. No, that contract of November 11th is simply a copy.

Q. Well, that is a copy of the original? A. Well, it is a copy of a carbon copy.

Q. Well, how do you know that? A. Because I had the carbon copy.

Q. Well, who had the original? A. When the deal broke up, why Mr. Mercer got the original back.

94 Q. You have no doubt that this copy is a true copy of the original that you drew, have you? A. No, sir, I don't believe it is; I have no doubt of it.

Q. You have no doubt that it is a true copy? A. No, sir; it is a true copy.

Q. Where did you draw that, at David Moore's office? A. At David Moore's office, yes, sir.

Q. And Mr. Mercer signed it? A. And Mr. Mercer signed it.

Q. Now, you notice that this copy of this agreement, which you say was drawn by you, contains this sentence: "The said life interest being held by my uncle Charles Carroll, who was born in the year of 1839." A. Yes, sir.

Q. You have no doubt that you had that information with respect to the date of the birth of Mr. Carroll at the time that Mr. Hight authorized you to go ahead and make this deal? A. I have no doubt that I had that information.

Q. And had you communicated that information to Mr. Hight? A. I have no doubt that I had.

Q. In the course of these conversations which you had with Mr. Hight, what did you say to him with respect to Mr. Mercer's want of money? A. Well, he seemed to know more about Mr. Mercer than I did; I didn't know much about him.

Q. Did Mr. Hight know Mercer? A. He knew of him by reputation, I guess.

Q. What did he say to you at any time about Mercer?  
95 A. Well, he said he had been a high roller. That is about all he had to say.

Q. Did he say that he knew that he was down and out? A. No, I don't believe he did.

Q. Well, did he say anything that would approximate that, or along that line? A. Well, I should think he would judge so from the fact that he wanted this money.

Q. Try to see if you can't recall what he said that indicated that kind of information or knowledge on his part? A. I don't believe that he said otherwise than he was a high roller and a great spender of money.

Q. Well, now, to your best recollection, then, Mr. Baker, this whole transaction leading up to the signing of this agreement of November 11th—all of these interviews with Mr. Hight, and between yourself and Mr. Hight and yourself and Mr. Mercer, and consummating, as I said, in the agreement of November 11th, all probably took place on the same day? A. Well, it might have been.

Q. Is that your best recollection? A. Well, it might have been. I could not recollect, because I probably saw Mr. Hight four or five times. I could not remember every instance, you know, and all the conversations or times that I saw him.

Q. But your best impression is that it all probably took place the same day? A. Well, I have no best impression about it. It took place in a short time; in a short time, and I could not tie my-  
96 self down to dates and hours, a year and a half afterwards, or two years.

Q. Now, the next morning you saw Hight and tendered him the original, as I understand it? A. Yes.

Q. Of this agreement of November 11th? A. Yes.

Q. Which Mr. Mercer had signed? A. Yes, sir.

Q. Which you had drawn up and Mr. Mercer had signed? A. Yes, sir.

Q. And Mr. Hight repudiated it, as I understand it, the whole transaction? A. Yes, sir.

Q. On what ground did he repudiate it? A. Well, he said that he would not loan that much on the lots.

Q. How much was it? A. \$500. He said that I had misunderstood him; he would not loan that much money.

Q. Did he tell you how much he would loan? A. Well, yes; he said he would loan him \$275.

Q. He told you to go and get that money back from Mercer? A. I tried to get it back.

Q. You did go back to Mr. Mercer and try to get it back? A. Yes, sir. He had spent it; bought a new suit of clothes and an overcoat.

Q. Did you report that fact to Mr. Hight? A. Yes, sir.

97 Q. Told him the money was not forthcoming? A. Yes sir.

Q. What did Mr. Hight say then? A. He said that I would have to pay it. I believe I told him I didn't think so.

Q. Then what took place next? A. I went back to Mercer.

Q. To see what you could do with him? A. Yes, sir.

Q. Now, what was the result of that interview with Mercer?

A. Well, Mercer had spent the \$75., and I guess he needed probably more money, and he agreed to close the deal at \$275.

Q. Said he would take it? A. Yes, sir.

Q. Did he say he could not help himself? A. No, he didn't say that; he just said he needed money; needed more money.

Q. Didn't he say, in substance, that he needed the money so badly he would have to take anything he could get? Was not that about what it was? A. No; I don't say that he said anything like that, no. He said that he needed the money. In every conversation I had with him he wanted money.

Q. Well, did you tell him that Hight said he would give him \$275? A. Well, I told him something near \$300; something like that.

98 Q. And the result of it was he said, "Well, I will take it." Is that it? A. Yes, sir.

Q. Did you report that to Mr. Hight? A. Yes, sir.

Q. When did Mr. Hight give you the balance of the money to give to Mr. Mercer? A. Well, I think it must have been about the 16th he gave a check—two checks.

Q. He gave you two checks? A. No, he gave two checks to Mr. Mercer.

Q. Who drew these papers dated the 16th, that you have identified? A. Well, I have understood that one of the papers was drawn by Mr. Bradley, and the other paper was drawn by Mr. Hight himself.

Q. Which paper, did I understand, was drawn by Mr. Bradley? A. The first paper.

Q. This assignment? A. Yes, sir.

Q. The assignment, you understood, was drawn by Mr. Bradley?

A. Yes, sir.

Q. Was that handed to you by Mr. Hight? A. Yes, sir.

Q. And was the other paper, which is called an agreement paper, dated the 16th also, handed to you by Mr. Hight at the same time? A. No, sir.

99 Q. It was not? A. No, sir. That was drawn later in the evening.

Q. On the same day? A. On the same day.

Q. You went back with this paper to Mr. Mercer, first the assignment paper, to Mr. Mercer first? A. No, I don't believe I did, Mr. McKenney. The question of the deeds came up then, about deed-ing to him, and then I went and got this paper.

Q. And that resulted in Moore's advice to Mr. Barber not to take the title? A. Yes. That was during the day. It was before four o'clock in the evening, because most of the salesmen had left at that time, and that was due to the advice of Mr. Moore.

Q. Well, then, you went back to report this difficulty with respect to the deeds and the inability to get Mrs. Mercer's signature to a mortgage to Mr. Hight? A. Yes, sir, I believe so.

Q. And who made any suggestion with respect to this agreement?

A. Well, I may have made the suggestion. I made the suggestion, I think, to Mr. Mercer himself that he take an agreement of this kind to be secured; that is, I thought Mr. Hight was worth it.

Q. And Mr. Mercer agreed to accept it? A. Yes, sir.

Q. And thereupon you reported to Mr. Hight, about it?  
100 A. Yes, sir.

Q. And did you see Mr. Hight draw that agreement? A. I believe I sat in his office when he dictated it to his stenographer.

Q. And subsequently Mr. Hight handed you that agreement?  
A. Yes, sir.

Q. And you went and got Mr. Mercer's signature to it? A. Yes, sir, both of them.

Q. In the meantime had Mr. Hight given you a check for the money? A. He gave two checks. Mr. Mercer said he wanted a small check so he could raise some money that night; he needed it; and I think the amounts were \$170 or \$180, and a small check for \$10 or \$12, something like that.

Q. What was the additional amount which Mr. Mercer received in the consummation of this transaction? A. I think it was \$190.

Q. You say he had already received \$75 from you? A. He had already received \$75, and receiving \$25 more. He had already received \$100.

Q. That made \$100? A. Yes, sir.

Q. When did you give him that next \$25, the next day? A. The next day after he had signed this.

Q. When he signed this paper of the 16th of November,  
101 Mr. Mercer had then received \$75. only? A. Yes, I believe you are right there.

Q. Out of the first \$100 that Mr. Hight had given you? A. I can't recollect exactly the different amounts. He got two checks, I know that.

Q. I think possibly you do not understand the drift of the question. I understood you to say that in the early stages of the transaction when Mr. Hight, after his telephone conversation with Bradley, told you to go ahead and make the deal, and he gave you \$100?  
A. Yes, sir.

Q. To be used on account of any transaction which you might make with Mercer? A. Yes, sir.

Q. I understood you to say that you saw Mercer and reached some agreement with Mercer which was evidenced by this paper of November 11th, and you paid to Mercer out of this \$100; \$75 on account?  
A. Yes, sir.

Q. Now, then, on the next morning, you saw Mr. Hight, and Mr. Hight repudiated the transaction? A. Yes, sir.

Q. And then began the interviews with Mercer, which resulted in Mercer taking the less amount? A. Yes, sir.

Q. In the meantime, of course, you kept the difference between the \$100 and the \$75.? A. Yes, sir.

Q. Now, then, on November 16th, Mr. Hight and Mr.  
102 Mercer signed these papers of that date evidencing the transaction between Mercer and Hight, on account of which \$275

appears to have been paid to Mercer? A. Well, something like that; similar to that.

Q. Of that amount \$75 had already been paid to Mercer? A. Yes, sir.

Q. Now, then, you say Mr. Hight gave two additional checks? A. Yes.

Q. One for—— A. (Interposing.) Probably \$180 and then a smaller amount. It was late in the evening, and he wanted to raise some money, and he said now make it in two checks so I can go and get it to-night.

Q. Then, after Mercer told you that, you went back to Mr. Hight's office? A. Yes, sir.

Q. And got these checks, of course? A. Yes, sir.

Q. And was it on that occasion that Mr. Hight gave you this memorandum agreement? A. Yes, sir.

Q. And you brought back to Mr. Mercer the two checks? A. No, I don't believe Mr. Mercer got the two checks until after the deeds were signed up, the same evening.

Q. The same evening? A. Yes, sir.

Q. But you brought back with you from Mr. Hight's the  
103 two checks? A. No. Mr. Mercer signed these two up before  
he got the checks, and before Mr. Hight made the checks out,  
and I went up to Mr. Hight and he gave me the two checks and Mr.  
Mercer was waiting down at the office.

Q. You don't recall how much they were for. A. Well, I believe the total was about \$190 or \$195, something like that.

Q. That was paid over to Mr. Mercer? A. Yes, sir, two checks.

Q. Was any additional money paid over to Mr. Mercer at any time? A. No, sir.

Q. Now, what became of the difference between \$190, which Mr. Hight seems to have given you on the 16th, and the \$100 which he gave you on or about the 10th or 11th? A. Well, I think Mercer got it.

Q. Well, you say that no other money was paid to Mercer. How did he get it? A. I said there was no money after that, but Mercer got all the money that I got; all of the \$100.

Q. Where did you pay it to him? A. At the office. That is my recollection.

Q. Do you recall when you paid him the remaining \$25 out of the first—— A. (Interposing.) No, sir, I do not.

Q. Are you sure that you did pay him? A. Well, I am sure he allowed me a commission.

Q. What was the commission? A. I don't remember just  
104 now what it was; a small one.

Q. Don't you recall what amount was paid to you for a commission? A. Well, it was a small amount. He got his full \$275. out of the deal, I know that.

Q. See, Mr. Baker, if you can't recall the monetary end of the transaction a little more definitely, and give it to us a little more clearly, because there does seem to be a little confusion. A. Well, it was more than \$275.

Q. Mr. Mercer got more than that? A. No, he didn't get more, but he got—in the transaction it footed up more than \$275.

Q. Well, how much did that foot up? A. Well, I think it footed up about \$285 or \$290, and I got the difference. I think that ought to be able to settle that proposition.

Q. And the real fact then is that Mr. Hight agreed, as the result of this repudiation of the first transaction and his subsequent agreement with you, he agreed to loan Mercer \$275 on these lots? A. Yes, sir.

Q. And that is all he agreed to loan him? A. Yes, sir.

Q. Now, he had already paid Mercer \$275 through you? A. Yes, sir.

Q. He gave you \$100? A. Yes, sir.

Q. And out of that—— A. (Interposing.) I think I  
105 got \$15 or \$20 of it.

Q. And out of that you paid Mercer \$75? A. \$75.

Q. And when you went to complete this transaction of November 16th, you paid Mercer \$200? A. No, I paid him less than \$200. It was less than \$200 that he got.

Q. Well, it was \$180 and that second check then? A. (Interposing.) \$10 or \$12, something like that. He wanted the money to use that night, and that is why he made it that way.

Q. And then I asked you subsequently whether you ever paid Mercer the remaining \$25? A. Yes; but he paid it back in the commission, you know. He didn't give it all. He only gave me about \$15, I think it was, if I remember it. I paid for the Notary. He didn't have any money to pay the Notary, so I got that much less out of him. I think I paid Mr. Walshe \$1. I don't remember just how much I did pay him. Anyhow, when we came to go to the Notary to have the acknowledgment, Mr. Mercer didn't have any money to pay for it, and I paid it.

Q. Mercer hadn't then collected the small check? A. No; he didn't get it until later in the evening. I had to take these papers back, and then Mr. Hight gave me the two checks.

Q. Then, before Hight gave you the two checks, Mercer hadn't spent his \$75? A. Yes, sir, he done that the night before.

Q. You advanced the \$1. to pay the Notary? A. I don't  
106 say that it is \$1, but whatever it was I advanced it.

Q. And hadn't gotten the papers signed, these two, of November 16th? A. No, sir.

Q. You went back to Mr. Hight? A. Yes, sir.

Q. And got the check for \$180? A. I think so.

Q. And the other check for either \$10 or \$12. A. Yes, sir.

Q. And gave both of those checks to Mr. Mercer? A. Yes, sir.

Q. Now, it appears, then, that up to that time you had actually paid Mr. Mercer either \$265 or \$267? A. Yes, sir.

Q. Now, later than that, you paid Mr. Mercer, out of this \$25 which you—— A. (Interposing.) I think he allowed me \$15, something like that; I don't remember it distinctly; it was a small amount.

Q. Now, then, whatever became of the difference in the transac-

tion? A. Mercer got it. I think he got the whole total of \$275. I got the balance. I think Mr. Mercer got—instead of \$275 involved, it was \$290 or \$295, something like that.

Q. Mr. Mercer got the full \$275 which the loan called for? A. I would not be positive of that, Mr. McKenney, I think he got  
107 the full \$275. I would not be positive of it; it has been two years or over.

Q. Now, Hight, then, having agreed to loan Mercer \$275 on this transaction, did actually loan to Mercer and Mercer did actually receive \$275, according to your theory? A. Yes, sir.

Q. And you got \$15 commission? A. I think it was about \$15; that is my recollection.

Q. Who paid it? A. Well, I don't know who. You can figure it up just the way you want. I should think that Mercer paid it.

Q. Did you ever account to Hight for that \$25, or any portion of this money? A. No, sir.

Q. Never had any accounting? A. No, sir.

Q. Well, the result of it all was, then, Mr. Baker, that Mr. Hight, on a loan of \$275 was in fact out over \$290? A. Well, that is my recollection; I may be mistaken. I think it run over \$275, the amount of money that he put into the deal. I may be mistaken about it.

Q. Now, I happen to have in my hand here a paper that purports to be a copy of an affidavit which you made, Mr. Baker, under date of the 7th of February, 1906, before Mr. Hugh B. Roland, which appears to be a summary statement. Do you recall making that? A. I recall making an affidavit in regard to the deal.

108 Q. In this affidavit I note this, you say: "This option," referring to these Baltimore lots, "was given by Mr. Hight in the agreement between him and Mr. Mercer, dated November 16th, 1905, and upon receipt of this option and the \$275 in cash, Mr. Mercer, as evidence of the sale to Mr. Hight of his interest in this legacy above referred to, executed and assigned thereof to Mr. Hight." The point is that, upon receipt of this option and \$275 in cash, Mr. Mercer signed this assignment? A. Well, they prepared the affidavit and I signed it. They can call it an option or whatever they please.

Q. You didn't make use of the word "option" then? A. Well, no, I didn't make use of the word "option."

Q. Under what circumstances did you sign this affidavit? A. Well, I can't recall them, Mr. McKenney. I know Mr. Hight requested me to sign an affidavit in regard to the deal, I believe, to send it to the trustee up to Portland, as I remember it now, though I am not clear on the point. I remember signing an affidavit.

Q. Do you recall where you signed it? A. I believe it was in the Colorado Building.

Q. Was it in Mr. Bradley's office? A. I am not so sure of that. I don't know. I am not satisfied whether it was in Mr. Bradley's office or not. I can't just recall.

Q. Do you recall who prepared the affidavit? A. No, sir, I do



not. I know the affidavit was prepared and ready for me to sign.

109 Q. Have you any doubt that that is a copy of the affidavit you signed? A. No, I have no doubt. I could not say absolutely that that is an absolute copy of the affidavit that I signed. I signed an affidavit similar to that.

Mr. McKENNEY: At my request, Mr. Matthews now hands me the original of the affidavit about which I have just been talking, to which is appended what appears to be the original of the agreement signed by Mr. Mercer, under date of November 11th, and I hand it to the witness for his identification, to see if he can identify it.

A. It is my remembrance that I signed this affidavit—it is my remembrance that this is a copy of the carbon copy, and I signed both of those, just simply to show what the copy was, and that the original was returned to Carroll Mercer.

Q. That is your best recollection? A. That is my best recollection; that he signed absolutely a contract similar to this, if he did not sign that. Now, that is my best recollection. Of course I am not positive on that.

Q. You recall that affidavit—the affidavit itself? A. Yes, I signed that.

Q. Do you recall the circumstances under which that affidavit was prepared? A. No, I do not.

Q. Who asked you to sign that affidavit? A. I think Mr. Hight did, or his lawyer, I am not certain which.

Q. And did you sign it just as it was prepared? A. Yes, sir.

110 Q. Did you dictate it? A. No, sir.

Q. Make any suggestions with respect to the form of it? A. No. I read it through, as I remember, and found it to be according to what I thought the deal was, and signed it.

Q. You have no doubt that, as stated here, the full sum of \$275 in cash was paid to Mr. Carroll Mercer on account of this? A. No, sir, I have no doubt of it.

Q. You don't think any more than \$275 was paid to him? A. No, I don't think there was any more than that.

Mr. McKENNEY: I would like to submit this in evidence.

(And the same is filed by the Examiner marked "Defendant's Exhibit No. 1").

Q. Have you ever had any conversation with Mr. Mercer since November 16th, 1905, on the subject of this transaction? A. No, sir.

Q. Have you ever had any conversation with Mr. Hight beyond the one which is referred to in connection with this affidavit? A. Yes, sir.

Q. How frequently? A. Well, I don't know; it was sometime, probably two months afterwards.

Q. Did any difference in view of recollection concerning this transaction develop between yourself and Mr. Hight? A. Well, I



don't remember just where it was—I believe it was over in  
111 Smith Thompson's office, probably—Mr. Hight came in and  
said that this man, the uncle, had died, and that was about  
all he had to say about it. Well, I says, "You are lucky."

Q. Said he had cashed in, did he? A. Well, I suppose he  
thought he had cashed in. I said you are lucky, or damn lucky, or  
something like that. And I didn't have any further conversation  
with him until sometime afterwards.

Q. Well, at any time when you had conversation with him, did  
any difference of recollection or view concerning this transaction de-  
velop between yourself and Mr. Hight? No, I think not.

Q. You don't recollect any? A. No. I had conversation with  
him afterwards, you understand, in regard to it, after he told me  
the claim was held up.

Q. Where have you been lately? A. Portland, Indiana.

Q. How long have you been living there? A. Since I left here,  
a year ago last May.

Q. Are you engaged in business out there? A. Yes, sir.

Q. You have no other business here in Washington? A. No, sir.

Q. You came to Washington for the purpose of making this depo-  
sition at this time? A. Yes, sir.

Q. That was your sole business in connection with it?

112 A. Yes, sir.

Redirect examination.

By Mr. MATTHEWS:

Q. Mr. Baker, you have been asked by Mr. McKenney in regard  
to statements made to you by Mr. Mercer concerning his uncle, Mr.  
Carroll's health. Did Mr. Mercer ever say anything to you in re-  
gard to Mr. Carroll's likelihood living for any length of time? A.  
Well, he said he could not tell how long he would live, you know.  
He didn't seem to know much about his uncle. He thought, as I  
remember it now, that he was out in Montana, and he didn't seem  
to know anything about him at all.

Q. Did he say anything about his living for ten or fifteen years?  
A. Well, he said he might live ten or fifteen years and might not.  
If he lived ten or fifteen years, he would rather settle the claim  
cheap than wait that long, you know—that is, his interest. He  
didn't seem to know very much about his uncle at all, his health or  
anything else.

(Agreeably to the stipulation of counsel the signature of the wit-  
ness to his foregoing deposition was waived).

J. ARTHUR LYNHAM, *Examiner*.

(At this point an adjournment was taken until further notice.)

113

FRIDAY, *January* 17, 1908,  
1:30 o'clock, p. m.

Met, pursuant to notice, at the office of Henry S. Matthews, Esq.,  
No. 1415 G street, Northwest, to resume the taking of testimony on  
one part of the complainant in the above entitled cause.

Present: Henry S. Matthews and P. A. Bowen, Jr., Esqrs., Solicitors for the complainant; Frederick D. McKenney, Esq., Solicitor for the defendant; the complainant, Clarence B. Hight, and the examiner.

*Note.*—It is understood and agreed that it will not be necessary for either party to make objection to the questions and answers, but the right to object for matters of substance shall be reserved to either party at any time after notice to the other, at any time prior to the coming on of this cause for hearing.

Thereupon CLARENCE B. HIGHT, the complainant, and a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. MATTHEWS:

Q. Mr. Hight, what is your name? A. Clarence B. Hight.

Q. You are the complainant in this suit against Mercer? A. I am.

114 Q. What is your occupation at this time? A. I am in the real estate business; the purchase and sale of real estate on my own account.

Q. Now, what was your occupation during November, 1905? A. The same.

Q. Mr. Hight, I show you a paper dated November 16, 1905, purporting to be an assignment from Carroll Mercer to Clarence B. Hight of his interest in the estate of Mrs. Sally S. Carroll, which has already been offered as an exhibit in this case. I would ask you to look at that paper and tell me if you are the Clarence B. Hight mentioned in that paper? A. (After examining same.) I am.

Q. Mr. Hight, what consideration did you give for the legacy mentioned in that assignment? A. A certain lot of ground on Rayner Avenue, in the City of Baltimore.

Q. Can you approximate the location of that lot? A. Yes, it is on the South side of Rayner Avenue, eleven or twelve hundred feet East of the Bloomingdale Road. The lot is 100 feet front by about 130 feet deep.

Q. What did you at that time consider that Baltimore lot to be worth? A. \$1,000.

Q. How do you arrive at that consideration? A. Well, I owned a lot of about the same dimensions on the opposite side of the same street, one-half square further from the car line, which I  
115 improved with small houses, and was able to sell them at a very fair profit, at which time, the time of the sale, I put the value of the lots at \$250 a-piece. Now, this 100 feet lot, the Mercer lot, we will say, to distinguish it, would be susceptible of sub-division into eight such lots as the ones I speak of, and I think it is no more than fair to say that each of these smaller lots is worth \$125, or one-half of what I was able to sell the others for; eight times 125 making \$1,000.

Q. Mr. Hight, did you have the necessary deeds prepared to effect a conveyance of this property to Mr. Mercer? A. I did.

Q. Who prepared those deeds for you? A. The office of Benson and Karr, in the Law Building, in Baltimore.

Q. I wish you would look at the papers that I now hand you, Mr. Hight, and see if you can identify what those papers are? A. (After examining same.) Yes. One is the deed which was prepared at that time, conveying this lot on Rayner Avenue, and the other is a mortgage prepared at the same time.

Q. What was the object of that mortgage? A. With the expectation that Mercer would execute same to secure me for a loan that I was to make him on this property.

Q. Now, were those deeds ever executed at that time? A. They were, neither of them, executed at that time.

Q. Why was that? A. Because Mr. Mercer claimed that  
116 it would be impossible for him to obtain the signature or consent of his wife to the mortgage of reconveyance.

Q. Through whom did you get that information, Mr. Hight? A. Through Mr. Baker, the agent and representative of Mr. Mercer in this entire transaction.

Q. What was the next proposition made to you, Mr. Hight, in regard to the matter of the loan you have spoken of, intended to be secured by this deed of trust, which was never executed? A. Mr. Baker proposed that, in lieu of absolutely conveying the property, that Mr. Mercer enter into an agreement whereby I should retain title to the property, make the loan of \$275, as agreed, and, further, agree to convey to Mr. Mercer, or any one he might desire, this property upon repayment of the loan any time within one year.

Q. Now, Mr. Hight, I show you a paper which has already been offered in evidence, and which bears date on the 16th day of November, 1905, and which purports to be signed by Carroll Mercer and Clarence B. Hight. I wish you would look at that paper and tell me if that is the agreement of which you have testified? A. (After examining same.) It is.

Q. Now, Mr. Hight, did Mr. Carroll Mercer, or anybody in his behalf, make a tender to you of the amount loaned, according to the terms of that agreement? A. No.

Q. Of the amount loaned? A. Never, according to the terms of the agreement.

117 Q. Well, did he ever make a tender to you of the amount of money which is mentioned in that agreement? A. There were a number of tenders made by Mr. McKenney.

Q. In behalf of Mr. Carroll Mercer, were they not? A. So he claimed.

Q. Now, is that letter that you have in your hand a letter that accompanied those tenders, or that special tender you testified to? A. Yes.

Mr. MATTHEWS: I just offer that letter in evidence as the original of a letter which is mentioned as an exhibit in the defendant's answer.

(And the same is filed by the Examiner, marked Complainant's Exhibit No. 4.)

Q. Did Mr. Mercer, or anybody in his behalf, ever make a demand for a conveyance of this Baltimore property, under the terms of the agreement of November 16, 1905, of which you have just testified? A. No.

Q. Mr. Hight, I will hand you a copy of a letter, dated November 15, 1906, and I wish you would look at that letter and tell me if that was a letter written by you declining the tender of the sum just named by you? A. (After examining same.) Yes. This is declining two offers, if you will note, Mr. Matthews.

Mr. MATTHEWS: I offer this letter in evidence, of November 15, 1906.

(And the same is filed by the Examiner, marked Com-  
118 plainant's Exhibit No. 5.)

Q. Mr. Hight, I show you a deed, which was exhibited to you in the early part of this examination, which purports to be a deed from Belle X. B. Hight and husband, to Carroll Mercer, dated the 14th day of November, 1905, and purporting to convey the lot on the South side of Rayner Avenue, of which you have just testified, purporting to be executed by Belle X. B. Hight and Clarence B. Hight, acknowledged before Chris Cox Dawson, Notary Public of this City and District, on the 15th day of November, 1906. I wish you would state what that deed is and the purpose for which it was executed. A. (After examining same.) This is the deed that was originally drawn to convey the Baltimore lot to Mercer, but was not executed at that time, or was not delivered at that time because of the other arrangement being made by agreement, but was executed later for delivery to Mr. McKenney, as the representative of Mr. Mercer.

Mr. MATTHEWS: Now, I offer that deed in evidence.

(And the same is filed by the Examiner, marked Complainant's Exhibit No. 6.)

Q. Was that deed ever tendered by you to Mr. Mercer, or anybody representing him? A. Yes; it was tendered to Mr. McKenney.

Q. In whose behalf, or for whom? A. As the representative of Mr. Mercer, accompanied by a letter.

Q. Mr. Hight, I show you a copy of a letter dated December 19, 1906, signed by you and addressed to Mr. Frederick D. McKenney, 1317 F street, Northwest. Is that the letter that you refer to?

119 A. (After examining same.) Yes.

Mr. MATTHEWS: Now I offer that copy of the letter in evidence.

(And the same is filed by the Examiner, marked Complainant's Exhibit No. 7.)

Q. Did you receive any response from Mr. McKenney to that letter? A. I did.

Q. I show you a letter signed by F. D. McKenney, addressed to you, and dated December 19, 1906. I will ask you if that was the reply to the letter of which you have just testified? A. (After examining same.) Yes.

Mr. MATTHEWS: I offer that letter especially in evidence.

(And the same is filed by the Examiner, marked Complainant's Exhibit No. 8.)

Q. Now, Mr. Hight, when you purchased the interest of Mr. Carroll Mercer under the will of Mrs. Sally Carroll, did you know Mr. Charles Carroll, his uncle? A. No.

Q. Did you know anything about his physical condition? A. No.

Q. Had you ever seen him to know him? A. No.

Q. Did you make any inquiries at all concerning that? A. All the information I had on that subject was given me by Mr. Baker, the broker, who exhibited to me a letter, I think, addressed to  
120 Mr. Mercer, signed by Mr. McKenney.

Q. Would you know that letter if you saw it again? A. Yes.

Q. Well, I show you a letter which has already been offered in evidence, dated the 10th of October, 1905, purporting to be signed by Mr. F. D. McKenney, and addressed to Mr. Carroll Mercer. I will ask you to look at that letter and see if that is the letter to which you refer? A. (After examining same.) Yes.

Q. Mr. Hight, at the time you purchased this legacy, to which I have just referred, were you personally acquainted with Mr. Carroll Mercer? A. No.

Q. Are you at this time personally acquainted with Mr. Carroll Mercer? A. No.

Q. Did you know anything of his financial condition? A. No, and don't know anything about it now.

Q. Do you know anything, or did you at that time, know anything in regard to his methods of living? A. No.

Q. And his place of abode? A. No.

Q. The domestic comforts with which he was surrounded? A. No.

Q. Or discomforts? A. No.

Mr. MATTHEWS: I offer especially that mortgage from Carroll Mercer to Belle X. B. Hight in evidence.

121 (And the same is filed by the Examiner, marked Complainant's Exhibit No. 9.)

Cross-examination.

By Mr. McKENNEY:

Q. Mr. Hight, in replying "No" to the various inquiries Mr. Matthews has just propounded to you concerning Mr. Carroll Mercer, his financial condition and methods and habits of life and place of abode, and so forth, do you wish to be understood as saying that you neither knew nor had heard from others, who were in your view worthy of belief, anything concerning Mr. Carroll Mercer on any of these subjects? A. At the time I made this purchase I knew absolutely nothing whatsoever about Mr. Mercer.

Q. Had you ever heard of Mr. Mercer prior to this time? A. Never had heard of him.

Q. Didn't know that he was in existence? A. No.

Q. Referring to the copy of the testimony of Mr. Baker, occurring on page 36 of the Examiner's transcript, Mr. Baker appears to have been asked whether he knew anything respecting the date of the birth of Mr. Mercer, at the time Mr. Hight authorized him to go ahead and make the deal with Mercer, and the witness answered, "I have no doubt that I had that information." He was next questioned as follows: "Q. And had you communicated that information to Mr. Hight?" A He answers, "I have no doubt that I had." In view of that statement, do you still say that you had no  
122 information whatever concerning Mr. Charles H. Carroll, as to his age or condition of health? A. I don't remember that Mr. Baker informed me in regard to the date of Mr. Carroll's birth, and he certainly did not inform me anything in regard to the condition of his health.

Q. Mr. Baker, in the same connection, was further questioned, as follows: "In the course of these conversations which you had with Mr. Hight, what did you say to him with respect to Mercer's want of money?" And Mr. Baker is reported by the Examiner to have answered, "Well, he seemed to know more about Mr. Mercer than I did. I didn't know much about him." He is further questioned: "What did he (Hight) say to you at any time about Mercer?" And he answers: "Well, he said he had been a high-roller. That is about all he had to say." You were present in Matthew's office at the time that Mr. Baker was giving this testimony, were you not? A. Yes.

Q. You heard him give those answers to inquiries propounded to him? A. Yes, but it does not necessarily follow that I agreed with him.

Q. Do you differ with Mr. Baker in respect to his recollection as to the facts underlying the answers which I have just read to you? A. Those particular ones, yes.

Q. Notwithstanding Mr. Baker's statement as set forth in those answers, you still desire to be understood as saying that you knew absolutely nothing whatever concerning Mr. Carroll Mercer,  
123 his manner of life, place of abode, financial condition, nor anything of that sort? A. At the time I made the purchase I knew absolutely nothing about him; but, after that, I received a great deal of gratuitous information on the subject.

Q. Did you ever make any inquiries concerning any of these matters referring to Mr. Carroll Mercer, prior to the time of making this so-called purchase? A. No.

Q. What inquiries, if any, did you make at any time concerning this transaction prior to December 16, 1905? A. The only inquiry that I made was in the—was of my attorney at that time, Mr. Andrew Y. Bradley, to ascertain if the assignment of Mr. Mercer would be good.

Q. When did you make that inquiry? A. Well, it was prior to the purchase.

Q. How long have you been in Washington, Mr. Hight? A. Three years.

Q. Have you been engaged in this real estate business during all that time? A. Yes.



Q. You had only been in Washington about a year then, at the time of this transaction? A. Yes.

Q. Have you been engaged in any other business, besides this so-called real estate business, at any time since you have been in Washington? A. No.

Q. Did you know Mr. Pickford—Thomas H. Pickford?  
124 A. Yes.

Q. How long had you known him? A. The first real estate deal I had in Washington was in connection with Mr. Pickford.

Q. Did you have any partnership arrangement or agreement with Mr. Pickford?

Mr. MATTHEWS: Specify your time.

Mr. MCKENNEY: I mean prior to this November 16, 1900.

A. Well, only as covered one transaction of some thirty-four houses in the Southeast. We were equally interested in that deal.

Q. Did you know Mr. Pickford before you came to Washington?  
A. I was introduced to him very shortly before I came to Washington.

Q. Had you any business transaction with Mr. Pickford before you came to Washington? A. No.

Q. And when did this transaction in which you were equally interested with him take place? A. That was in the year 1904. It was started before I came to Washington. I still lived in Baltimore at the time that that was started.

Q. Were you still holding business relations with Mr. Pickford in November, 1905? A. None whatsoever, unless we may have owned a few of these pieces of property together. I don't recollect whether they were all disposed of at that time.

Q. In connection with Mr. Pickford, had you been dis-  
125 counting paper not connected with this particular transaction? A. No; I never discounted any paper in my life.

Q. Did you ever have any similar transaction to this one with Mercer? A. This is the only one I ever had.

Q. Did you know that Mr. Pickford had been approached by Mr. Baker with respect to the transfer of this Mercer interest in this legacy before you had been approached about it? A. No, I did not. I heard afterwards that he had been.

Q. How long had you known Mr. Baker? A. Only a short time before this Mercer matter.

Q. Had you been in the habit of doing business with Mr. Baker?  
A. Yes, I had two or three deals with Mr. Baker.

Q. Of what general character were they? A. He sold me property.

Q. Do you recall the first interview that you had with Mr. Baker concerning this Mercer transaction? A. Not particularly as such, no.

Q. When was the first occasion, according to your recollection, when you had any interview with Mr. Baker concerning this transaction, and where did it occur? A. He came to my office and told

me that here was a chance to perhaps make some money; that he had this interest in an estate which he offered me for sale.

Q. Well, what was your reply to him? A. My reply was that I didn't want to have anything to do with it.

126 Q. Did that end the interview? A. Well, Mr. McKenney, it is impossible for me to remember whether that ended the first interview or not. Eventually he talked me into buying it. I don't know how many interviews we had.

Q. Who made the first proposition of transferring real estate for Mercer's interest in connection with this legacy of his grandmother? A. I did.

Q. What did Baker have to say to that? A. He said he would try it on.

Q. What was the result of it, of his trying it on? A. The result was that he returned and said that Mercer wanted money.

Q. Did he say that Mercer needed money? A. He may have said Mercer needed money; we all need money. He said Mercer wanted money.

Q. Well, what further, if anything, did he propose? A. He proposed that I should make Mercer a loan on the property after deeding it to him.

Q. Well, what did you have to say to that? A. I said I would do it.

Q. Was any amount mentioned? A. Yes, there probably was an amount mentioned. At any rate, I agreed to lend the \$275, and that is all I did ever agree to lend.

Q. Mr. Baker refers to an agreement, under date of November 11, 1905, which has been put in evidence here, which recites the payment of \$75 in cash to Mercer and an agreement to pay him  
127 thereafter \$425. When did you first see that paper, if you ever did see it? A. I don't remember ever having seen it until very recently here. But I refused to do it. I refused to lend that amount of money when Mr. Baker came back at one of these visits with this suggestion or agreement that they have there. I was not a party to that agreement.

Q. Mr. Baker says that in making that agreement he was acting for you and under an instruction from you, and that he, by your instructions, advanced this \$75 out of his own pocket.

Mr. MATTHEWS: No, I don't think he said that, Mr. McKenney.

Q. (Continuing:) And that by your instruction he paid out this \$75 which you had advanced to him for that purpose. What have you got to say about that? A. Well, that is not so.

Q. Well, what do you say was the arrangement between yourself and Baker under which you did give Baker this \$75 on account of the transaction, didn't you? A. Yes.

Q. Well, now, what do you say was the transaction between yourself and Baker as to it? A. That was to close the deal on the lines that I had outlined as being satisfactory to me.

Q. Well, now, what were those lines? A. That I should deed to Mr. Mercer a lot in Baltimore, take a mortgage back on same for \$275, which loan I would make him.



128 Q. Why did you decline to loan any more than \$275 under that mortgage, Mr. Hight? A. I thought that was good business.

Q. What do you mean by "good business"? A. We don't ordinarily make any more loans than we have to on real estate, and I at that time didn't want to purchase the interest. I always felt averse to it, but was willing to take a chance at the figures that I named.

Q. What do you mean by a "chance"? A. Well, take a chance on deriving anything from the interest that was to be sold. I didn't know much about the case.

Q. You had been informed, though, that the amount of money which would be coming due to Mercer at his uncle's death was this sum of twenty-four hundred and some odd dollars, hadn't you? A. I think it was twenty-three hundred and some odd dollars, through your letter.

Q. You had been specifically informed as to that? A. I had seen the letter that Mr. McKenney wrote.

Q. Did you make any inquiry of Baker as to the contents of Mercer's letter, to which my letter was a reply? A. No.

Q. Have you any reason to believe that Baker did not show that agreement of November 11, 1905, on the day of its date, or the next day thereafter, as he testified he did? A. My recollection is that I never saw that agreement until recently, the agreement of November 11.

129 Q. Do you know where that agreement was prepared, and by whom it was prepared? A. The agreement of November 11?

Q. Yes. A. I know nothing about that.

Q. When did you give instructions for the preparation of this deed and accompanying mortgage, bearing date November 14, which has been offered in evidence to-day? A. Just as soon as Mr. Baker informed me that Mr. Mercer was willing to take the property in Baltimore in payment for his interest in the estate, and that I was to loan him \$275.

Q. Well, do you recall when that was? A. The specific date?

Q. Yes. A. No; it was between—it was prior to November 16. We had to get the papers prepared. It must have been prior to November 14, wasn't it—if those deeds are dated November 14, it must have been prior to that date.

Q. How did you communicate with the firm in Baltimore of Benson and Karr, for the preparation of these papers? A. My recollection is that I called them on the telephone. In order to fix the date I will present a letter of November 15, 1905, signed by Mr. Karr of Baltimore, enclosing the necessary papers.

(The said letter last referred to is filed by the Examiner, marked Defendant's Exhibit No. 2.)

By Mr. McKENNEY:

Q. Mr. Hight, this Baltimore lot which we have referred to as

the Rayner Avenue lot, was probably worth as much in November, 1905, as it was in November, 1906, wasn't it? A. No.

Q. What difference was there? A. There had been during that year quite extensive improvements in that locality.

Q. So that it was really worth more in 1906, in your view, than it was in 1905? A. Yes, I think it was.

Q. What relation, if any, did the amount which you offered to loan on the lot bear to the value of the lot, in your view, at the time of the offer? A. I think it was a very safe loan.

Q. Probably sixty-six per cent. of its value? A. No.

Q. Among real estate men loans on real estate are regarded as pretty safe when they are at sixty-six per cent. of the usual value or reasonable value of the property, are they not? A. No, I don't think so. About fifty per cent. is safe; anything less than that is safer.

Q. And you thought that this loan of \$275 on this lot was a reasonable and safe loan? A. I thought it was a very safe loan. The making of the loan was entirely a different transaction from the purchase of the interest.

Q. This lot had come to Mrs. Hight through some probate proceedings, had it not? A. Yes.

Q. Was it sold, also, under some proceedings in partition, or was it distributed—I mean the title to it passed to Mrs. Hight under some proceedings in partition? A. Yes.

Q. Do you recall what it was appraised at in that partition suit? A. I do not.

Q. Is it not a fact that some time in the year 1904, in the course of proceedings under a bill of complaint filed by Mrs. Hight, to which bill of complaint you were a party, said bill being filed in the Circuit Court for Baltimore City, the particular proceedings being to secure the partition in kind of the real estate comprising the dower of a Mrs. Broumel, the particular lot to which you have referred in connection with this Mercer transaction was returned appraised as being of the value of \$450? A. I don't remember.

Q. Have you any doubt that that was the appraised value of that lot? A. No.

Q. You think it is altogether likely that it was? A. I didn't say so. I have no doubt. You seem to have a copy there of the records. I don't remember.

Q. Who prepared the so-called assignment of November 16 of Carroll Mercer's interest in this legacy which has been offered in evidence in this case? A. Andrew Y. Bradley.

Q. Was it drafted in Mr. Bradley's office? A. That I don't know. He prepared it and brought it to my office.

Q. Was that the assignment that Mr. Mercer is supposed to have signed? A. Yes.

Q. To whom did you deliver that assignment? A. I sent it down and had it recorded.

Q. You said that Mr. Bradley had prepared it and brought it to your office? A. Yes.

Q. How did Mr. Mercer's signature get to it? A. Oh, it was delivered to Mr. Baker.

Q. By you? A. Yes.

Q. And Mr. Baker returned it with Mr. Mercer's signature to it, is that it? A. Yes.

Q. Well, now, who prepared the so-called agreement of November 16, 1905? A. I did.

Q. You prepared that? A. Yes.

Q. That was not prepared by Mr. Bradley? A. No, sir.

Q. Where was that prepared? A. In my office.

Q. Was that delivered to Mr. Baker at the same time that you delivered to him the draft of the assignment bearing the same date? A. I think it was delivered the same day, but not at the same time, because Mr. Baker and I conferred about the wording of the agreement of loan, and it was being typewritten while he went and found Mr. Mercer and had him sign the assignment.

Q. You never recorded the agreement of loan? A. No, 133 I didn't consider that necessary.

Q. You did record this assignment in the District of Columbia. Anywhere else? A. No.

Q. Now, you said that the deed of yourself and wife, dated November 14, 1905, was not signed at that time—not executed or delivered at that time? A. I said it was not executed and delivered. I don't remember when it was signed. It was signed in 1905.

Q. It was signed in 1905? A. Yes.

Q. What makes you think that? A. Because we had gone as far as to sign the deed before I had found out through Mr. Baker that Mr. Mercer could not take it.

Q. That deed purports to have been executed before Chris Cox Dawson on the 15th day of November, 1906. You have no reason to doubt the fact that it was acknowledged at the date when it purports to have been acknowledged, have you? A. No. It was acknowledged at that time for the specific purpose of making a tender to you.

Q. Under whose instructions or advice was that done?

Mr. MATTHEWS: I will admit that it was mine.

A. I think it was Mr. Matthews.

Q. Well, prior to the receiving of Mr. Matthews' advice upon this subject, you had not executed or acknowledged any deed whatever concerning this transaction? A. No.

Q. Now, this deed, as you say, was tendered to me upon 134 the theory that I was the representative of Mr. Mercer in the premises? A. Yes.

Q. The tender was refused by me upon the ground as stated in my letter to you, that I was not the representative of Mr. Mercer for such purpose, is that not so? A. I think that is the reason. The letter is in evidence here; it can speak for itself.

Q. You have held that deed in your own possession ever since?

A. No, I haven't had possession of it. Mr. Matthews has had. Somebody else has had it.

Q. It has been in your possession or under your control ever since? A. Yes.

Mr. MATTHEWS (to the witness): You had it up to the time of taking this testimony.

By Mr. McKENNEY:

Q. That deed has never been offered for record anywhere, has it, Mr. Hight? A. Not that I know of.

Q. Well, you have no reason to believe that it ever has been submitted for record, have you? A. No.

Q. You have never given any instructions to have it recorded by any one, have you? A. No.

Q. Mr. Hight, I hand you a letter under date of October 19, 1906, purporting to have been signed by yourself and addressed to  
135 Mr. Carroll Mercer, and ask you whether you wrote and mailed that letter to Mr. Mercer? A. Yes, sir.

Mr. McKENNEY: I offer this letter in evidence and ask that it be set out in the record.

(And the same is filed by the Examiner, marked Defendant's Exhibit No. 3, and copied into the record, pursuant to the request of counsel, as follows:

"WASHINGTON, D. C., *October* 19, 1906.

Carroll Mercer, Esq., 3132 P St. N. W., Washington, D. C.

DEAR SIR: I beg to call your attention to the conditions of the agreement between us, dated November 16, 1905, Whereby you are entitled to a deed in fee simple of a certain lot of ground in the city of Baltimore, State of Maryland, upon repaying to me the Two Hundred and Seventy Five Dollars (\$275) loaned you on this property on the date above referred to.

I have recently received an inquiry in regard to this property and on account of same, feel that an advantageous sale could be made at this time. I must therefore, insist upon a strict compliance by you in our agreement, as if you do not intend to take over the property, I desire to avail myself promptly of any opportunity to sell.

Very truly yours,

C. B. HIGHT."

By Mr. McKENNEY:

Q. Mr. Hight, have you at any time had any communication with Mr. Nathan Clifford, of Portland, Maine, concerning this transaction with Mr. Mercer? A. Yes.  
136

Q. Have you the originals of your own retained copies of letters concerning this transaction, which have passed between yourself and Mr. Clifford? A. Yes.

Q. Have you got them here with you? A. No.

Mr. MATTHEWS: Was Mr. Clifford his advisory counsel there?

Mr. McKENNEY: I suppose so.

The WITNESS: Not at all, sir.

Mr. MATTHEWS: If he was advisory counsel I would naturally object to any matters that passed between client and counsel being offered here in evidence, as a communication that could not be used for that purpose.

By Mr. McKENNEY:

Q. Will you produce either the originals or the retained copies of your communications on this subject with Mr. Nathan Clifford?

A. Yes.

Q. Have you any objection to those communications going into the evidence in this case? A. None whatever.

Mr. McKENNEY: I will ask, therefore, that this deposition be held open, Mr. Matthews, for the production of those.

Mr. MATTHEWS: Well, he has stated that there was no confidential relation existing between the two.

137 The WITNESS: I don't want this to go down here. All the correspondence with Clifford was in view of a compromise.

Mr. McKENNEY: That is all right. I have no objection to it. All I want to know is what transpired there. I desire, particularly, that you produce the letters, the communications that took place.

The WITNESS: I will produce all that I have, and I think I have them all.

Mr. McKENNEY: When produced they may be handed to the Examiner, who will make copies of them in the record.

Mr. MATTHEWS: Yes.

By Mr. McKENNEY:

Q. Mr. Hight, I hand you what purports to be a duly certified check of the Commercial National Bank dated November 16, 1906, being No. 56, payable to the order of Clarence B. Hight, for \$291.50, and purporting to be signed by William Hitz, and would ask whether you recognize that as the check which was tendered to you in connection with my letter to you of a certain date, which has been offered in evidence here to-day? A. (After examining same.) I think very probably it is the same check.

Mr. McKENNEY: I desire the Examiner to make a copy of the check referred to in the record.

The said check is here copied into the record, pursuant to the request of counsel, as follows:

"No. 56. WASHINGTON, D. C., November 15, 1906.

The Commercial National Bank of Washington, D. C.

138 Pay to the order of Clarence B. Hight, \$291.50 Two hundred and ninety-one 50/100 Dollars."

WILLIAM HITZ.

(Across the face of the check:)

"Certified. \$291.50. Don't destroy this check. The Commercial National Bank, R. E. Claughton, Assistant Cashier."

Q. Do you know Mr. Patrick J. Walshe? A. No.

Q. In the course of Mr. Baker's testimony reference was made to an affidavit made by Mr. Baker and executed before Hugh B. Roland, Notary Public, on the 7th day of February, 1906, a copy of which affidavit I hand to you now, and ask you whether you ever before saw the original of that affidavit, or any copy thereof? A. (After examining same.) Yes, I have seen this before.

Q. When did you see either the original or a copy of that affidavit? A. Mr. Baker brought it to my office.

Q. What caused Mr. Baker to make that affidavit? A. He was expecting to leave the city, and I told him it would be a good idea if he would leave a record of this transaction, because it looked as though we were going to have trouble.

Q. So that that affidavit was made at your request? A. Yes.

Q. The tender of that check which you have just identified was made to you by Mr. William Hitz, of my office, was it not? A. No; I think it was enclosed in a letter to me.

139 Q. Prior to the receipt of that letter by you, had Mr. Hitz, on my behalf, made any tender to you in connection with this matter? A. Yes. Mr. Hitz came to my office and tendered me cash.

Q. For this amount? A. I suppose it was. I didn't count the money.

Q. What action did you take in connection with the tender? A. I told him that I could not see how I had any right to take the money unless I delivered to Mr. Mercer a deed, which I was ready and willing to do.

Q. Do you remember the date on which that personal tender by Mr. Hitz was made? A. No, but the records here will show it. It was just prior to the sending to me of the check.

Q. In this letter of yours to myself, under date of November 15, you refer to a tender of currency by Mr. Hitz yesterday, so that we may safely assume that the transaction in which Mr. Hitz figured took place November 14, 1906, may we not? A. Yes.

Q. At the time that Mr. Hitz made this tender of currency to you, which tender you say you refused to receive unless Mr. Hitz would also receive on behalf of Mr. Mercer the deed covering this lot, did you make a tender of this deed to Mr. Hitz? A. No, but I told him that I would deliver it to him at once.

140 Q. As a matter of fact, you were not at that time prepared to make any such delivery, were you? A. Yes. I had that deed ready, signed, and all it would have been necessary would be to get the Notary Public to go up and see Mrs. Hight.

Q. When did you first become informed of the fact that Mr. Carroll, Charles H. Carroll, had died? A. A gentleman, who was a perfect stranger to me, came into the office and told me. I have been trying to think what his name is.

Q. You don't recall who it was that gave you this information? A. I don't remember his name. He is a real estate broker and has an office on the Southwest corner of 13th and F streets, Northwest, upstairs.

By Mr. MATTHEWS:

Q. Gadsby, was it? A. Gadsby, yes.

By Mr. McKENNEY:

Q. Why did Mr. Gadsby think that you had any interest in knowing that piece of information? A. Well, that I am not absolutely able to state. I think he was a friend of somebody interested in the Mercer family.

Q. Have you any theory as to why Mr. Gadsby picked you out to give you that piece of information? A. Any theory?

Q. Yes. A. Well, he said the reason of his visit was to  
141 find out what Mercer had done with his interest in this estate, and in the course of the conversation he said that Mr. Mercer had recently died.

Q. Did he tell you why he had come to you about that—why did he think that you were concerned in it, or knew anything about it?

A. Well, he had got the information somewhere, I don't know where.

A. I understand you now to say that you never at any time came personally in contact with Mr. Carroll Mercer? A. Yes, sir; never met him.

Q. You say that subsequent to this transaction, you did receive a great deal of gratuitous information concerning Mr. Mercer and his habits and financial condition? A. Yes.

Q. Where did you receive that from. A. Principally from Mr. John Beale, a relative of him.

Q. In any other direction? A. No, I don't remember any other.

Q. Did you ever hear Mr. Carroll Mercer generally discussed? A. No.

Mr. McKENNEY: Well, now, subject to the introduction of this other correspondence, and upon the assumption that all these various papers of which you have copies, and of which I also either have originals or copies pertaining to the transaction, have been properly brought in evidence, and subject only to my right to recall Mr. Hight  
142 for further cross-examination, if, upon examination of the transcript here, it appears that something has been omitted, I am entirely willing to close the cross-examination.

Mr. MATTHEWS: I have not received any letters from Mr. Hight to anybody else except you and General Brown, but I haven't seen any of the letters to Mr. Clifford. I haven't seen any of those at all.

NOTE.—It is stipulated that the record in this case of Isabelle X. B. Hight and Clarence B. Hight, her husband, *vs.* Laura V. King, Docket 43A, folio 176, in the Circuit Court for Baltimore City, which said cause was consolidated on March 4, 1904—that in said cause the commissioners to divide, appointed March 4, 1904, returned the so-called Rayner Avenue lot referred to in this deposition as of a value of \$450, and that said lot was by said commissioners allotted in severalty to Belle X. B. Hight.

Signature of witness waived by consent of Counsel.

J. ARTHUR LYNHAM, *Examiner.*

(At this point an adjournment was taken until further notice.)



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*Note by the Examiner.*

The correspondence referred to by the witness Clarence B. Hight on page 79 of the record was subsequently handed to the Examiner, who files the same herewith, marked Defendant's Exhibits Nos. 4, 5, 6, 7, and 8, respectively, and the same is copied into the record, at the request of counsel, as follows:

"Clifford, Verrill & Clifford, Counsellors at Law and in Patent Causes,  
First National Bank Building.

PORTLAND ME., *Sept.* 19, 1906.

Clarence B. Hight, Esq., Washington, D. C.

SIR: I have had an interview in the matter of the Carroll-Mercer matter with my Uncle and he informs he that he is simply waiting the action of the Orphan's Court as to the disposition of the Carroll-Mercer property. He assures me that at least such money as you have actually paid out will be returned but even this he says that he will be unable to pay until he gets an order to do so. He says that he has written to his attorney in Washington instructing him to bring the matter before the Court and get the proper order. As soon as I hear anything new on the subject I will let you know.

Very respectfully,

NATHAN CLIFFORD."

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"OCTOBER 9, 1906.

Nathan Clifford, Esq., First National Bank Bldg., Portland, Me.

DEAR SIR: Replying to your favor of the 19th ult., I beg to say, that the matter of the disposition of the Carroll Mercer property has never been brought before the Orphans Court of the District of Columbia. General Brown's local attorney endeavored to bring it before this Court, but it was not allowed as the judge of same claimed that this court did not have jurisdiction.

The local attorney for General Brown has made me an offer of what he claims was my actual outlay. I thought I explained this to you very carefully, and his offer was refused by me.

I hold an absolute assignment from Carroll Mercer of his interest in the estate of Susan Carroll, and what I supposed you were going to ascertain was simply, will General Brown turn this legacy over to me without litigation? Will you kindly ascertain this, yes or no, at once, for if the answer is no, I shall at once proceed to collect same. Acting in accordance with your views on the subject and you are unable to make amicable settlement, I shall be forced to place the matter in other hands for the reason you gave me, as much as I shall regret to do so. I would appreciate a prompt reply.

Yours very truly,

— — —.

145 "City of Portland, Me., Mayor's Office, Nathan Clifford,  
Mayor.

OCTOBER 31, 1906.

Mr. Clarence B. Hight.

DEAR SIR: I have your favor of recent date relative to the Carroll Mercer matter and yesterday had another interview with my uncle relative to the same.

My uncle informs me that he is not willing to pay more than the actual money advanced with interest on the same from the date of loan to the date of payment at the rate of six per cent and any expense you may have incurred in regard to the matter, unless so ordered by the court. He wishes me to say to you most emphatically that he did not wish you to lose any money out of the transaction whatever but in view of the very stringent circumstances in which Mr. Mercer's family now is he feels that unless ordered by the court to pay more than that amount he will not consent. He told me that Mrs. Mercer and her two daughters were in very straightened circumstances; that the daughters were in some charitable institution and that she herself was barely making both ends meet by dressmaking, etc. He has no sympathy whatever with Mercer himself but does feel as though the wife and daughters should receive some money. At the present time neither he nor Mr. McKenney know the whereabouts of Carroll Mercer but they are trying  
146 tion of paying any money to Mercer if he can possibly avoid it.

It seems to me that if you wish to continue further in this matter that you should have your attorney in Washington take the matter up for I understand that the trust funds are absolutely within the jurisdiction of the district.

I feel that I have done all that I can do here in Portland and in view of these circumstances think the conduct of affairs now should be left entirely in the hands of your Washington attorney.

Very respectfully,

NATHAN CLIFFORD.

NOVEMBER 5, 1906.

Nathan Clifford, Esq., First National Bank B'd'g., Portland, Maine.

MY DEAR MR. CLIFFORD: I have given considerable thought to the contents of your favor of the 31st ult. and must admit that I am considerably impressed thereby, so much so, that I beg to make you the following proposition.

I will accept in full settlement of my claim, the return to me of the actual money I am out, say Four Hundred and Fifty Dollars (\$450), and one half the balance of what is left in the legacy after deducting the above mentioned amount to me, provided that said  
147 settlement is made within thirty (30) days from November 16, next, and I will assist your uncle in any way proper, to convert the remaining one half of balance of legacy to the use of the family of Carroll Mercer and not to himself.

The above proposition is also contingent upon Carroll Mercer not

availing himself of the option to obtain possession in fee simple of the certain lot of ground in the City of Baltimore, which was traded to him for his interest as above. Should he come forward on or before the 16th of this month and repay loan made by me on said property thereby being entitled to a deed in fee, then and under those conditions I would not be able to carry out the above proposition as the actual expense to me would amount to more than one half the legacy. In the event that a compromise of this matter is arrived at, all fees and expenses of every kind must be paid out of the portion retained by General Brown for the family of said Mercer.

I trust both you and your uncle will understand that I am perfectly well aware of the absolute strength of my position from a legal standpoint and am simply led to make the above suggestion of compromise by a consideration of the fact of the condition of Carroll Mercer's family, as explained in your favor of October 31.

The above proposition must be accepted by your uncle on or before November 16th next, or same is withdrawn.

Very truly yours,

—— ———."

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"Mayor's Office, Portland, Maine.

NOVEMBER 7, 1906.

Clarence B. Hight, Esq., Colorado Building, Washington, D. C.

DEAR MR. HIGHT: I have your favor of the 5th inst. and have referred the same to General Brown for his consideration.

He has the matter under advisement and will inform you of his decision as soon as possible.

Very truly yours,

NATHAN CLIFFORD."

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COMPLAINANT'S EXHIBIT No. 1.

Law Offices of Wayne MacVeagh, Frederic D. McKenney, John Spalding Flannery, William Hitz, 1317 F Street N. W., Washington, D. C.

OCTOBER 10, 1905.

Carroll Mercer, Esqr., c/o James F. Barbour, 522 Eighth St., N. W., City.

MY DEAR CARROLL: I have your note of the 10th instant requesting me to inform you as to the amount you "should get from my (your) Grandmother's estate on the death of my (your) uncle Charles", and also requesting me to advise you as to his age, condition of health and residence.

By your Grandmother's will, which was duly admitted to probate and record in the District of Columbia on or about the 31st day of May, 1905, it was directed that her executor should take and hold in trust the sum of \$10,000 to be invested in securities, the income to be paid to Mr. Charles H. Carroll as an annuity, and at his death the principal to be "disposed of in this way,—three thousand shall be given to my grandson Carroll Mercer and seven thousand shall

be given to my grandson John Francis Mercer, to them and their heirs forever."

Upon the settlement of your Grandmother's estate it was found to be insufficient to make good the principal sum of \$10,000 as therein provided—said sum shrunk to the sum of \$7,841.24. This amount is represented by the joint and several promissory note of Mrs. Mary E. Fuller and the Honorable M. W. Fuller, her husband, secured by a deed of trust upon premises 1801 F street N. W., in this city.

As I figure it, upon the above basis, the proportionate share in the residuum of \$7,841.24, which will become your own at the death of your uncle, Mr. Charles H. Carroll, is \$2,352.37.

I have no information as to the present whereabouts of Mr. Carroll nor as to his age nor present condition of health. General John Marshall Brown could doubtless give you full information upon those points.

Yours very truly,

F. D. McKENNEY.

I.

151 \* COMPLAINANT'S EXHIBIT No. 2.

I, Carroll Mercer of the city of Washington District of Columbia, being one of the legatees named in the last will and testament of my grandmother, Sally S. Carroll whose said will is duly recorded in the office of the Register of Wills in said District, do hereby, for good and valuable consideration the receipt whereof at and before the signing and delivery of these presents is hereby acknowledged, sell, assign, transfer and convey to Clarence B. Hight of said city and District, all of my right, title and interest in and to the legacy bequeathed to me by the said Sally S. Carroll by her said last will and testament.

In testimony whereof I have hereunto set my hand and affixed my seal this 16th day of November A. D. 1905.

CARROLL MERCER. [SEAL]

Wit:

P. J. WALSH.

DISTRICT OF COLUMBIA, ss:

I Patrick J. Walshe a Notary Public in and for said District, do hereby certify that Carroll Mercer, party to a certain deed of assignment bearing date the 16th day of November A. D. 1905 and hereto annexed, personally appeared before me in said District, the said Carroll Mercer being personally well known to me as the person who executed said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this 16th day of November A. D. 1905.

[SEAL.]

PATRICK J. WALSH,  
Notary Public, D. C.

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(Endorsed.)

Received for record on the 18 day of Nov. A. D. 1905 at 10:28 o'clock A. M., and recorded in Liber No. 2934 at folio 277 *et seq* one of the Land Records of the District of Columbia, and examined by

JNO. C. DANCY, *Recorder.*

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## COMPLAINANT'S EXHIBIT No. 3.

This agreement, made this 16th day of November in the year One Thousand nine hundred and five by and between Carroll Mercer of the City of Washington, District of Columbia, party of the first part and Clarence B. Hight of the same place, party of the second part:

Whereas. The said Hight has this day loaned to the said Mercer the sum of Two hundred and seventy-five dollars, (\$275.00) the receipt of which the said Mercer hereby acknowledges.

Now therefore, The said Hight hereby agrees upon repayment of the said sum of Two hundred and seventy-five dollars (\$275.00) with interest at the rate of six per cent from date to the time of said repayment, provided same shall occur within the period of twelve months from the date hereof, and in that event only, to deed to the said Mercer in fee simple and without encumbrance of any sort. The lot of ground situate lying and being in Baltimore City state of Maryland and described as follows; that is to say: beginning for the same on the south side of Rayner Avenue at a point, from which a line drawn at right angles to Rayner Avenue would comprise the easternmost line of the lot now being described and the westernmost line of the lot adjoining to the eastward, said beginning being at . . . . . the distance of twelve hundred and seven feet and two inches easterly from the southeast corner of Rayner Avenue and the Bloomingdale Road, and running thence southerly at  
154 right angles with Rayner Avenue one hundred and thirty feet to an alley twelve feet wide; thence westerly binding on the north side of said alley one hundred feet; thence northerly at right angles with Rayner Avenue one hundred and thirty feet to Rayner Avenue, and thence easterly binding on the South side of Rayner Avenue one hundred feet to the beginning.

Witness, the hand and seals of the parties hereto, this day and year first above written.

CARROLL MERCER. [SEAL.]  
CLARENCE B. HIGHT. [SEAL.]

Test:

NATHAN H. BAKER

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## COMPLAINANT'S EXHIBIT No. 4.

Law Offices of Wayne MacVeagh, Frederic D. McKenney, John Spalding Flannery, William Hitz, 1317 F Street N. W., Washington, D. C.

NOVEMBER 14, 1906.

Clarence B. Hight, Esqr., Colorado Building, Washington, D. C.

DEAR SIR: By direction of Mr. Carroll Mercer I hand you herewith Two hundred and ninety dollars (\$290.00) in United States Treasury Gold notes together with One dollar and fifty cents (\$1.50) in United States Silver coin, making in all the total sum of \$291.50, in full repayment of the sum of \$275.00 loaned by you on or about November 16, 1905 to Mr. Mercer, and interest thereon at the rate of six per centum per annum for the period of one year from that date. Mr. Mercer also directs me to return to you the enclosed paper writing dated November 16, 1905, signed by yourself and which among other things refers to the above mentioned loan, and he requests me to say that without reservation of any sort or kind he neither has nor at any time has made claim of any right, title or interest in or to the property situated in the City of Baltimore, State of Maryland, therein particularly described, and further, in order that you may be under no embarrassment whatever in that regard by reason of the terms of the above mentioned paper writing, he hereby waives and disavows any claim or interest of any sort or kind which he might otherwise, by reason of the terms of said paper writing, be supposed to have in said property.

Mr. Mercer has also forwarded to me your letter to him of October 19, 1906, which, in view of the above, would seem to require no answer on his part beyond the acknowledgment of its receipt.

In view of the above you are at full liberty to avail yourself of the opportunity to make the advantageous sale of said property referred to by you therein.

Kindly favor me with an acknowledgment of receipt of the above mentioned sum of \$291.50, and greatly oblige,

Yours very truly,

F. D. McKENNEY.

Enclosures I.

Received this — day of November A. D. 1906 from Carroll Mercer, Esq., through F. D. McKenney, Esq., the sum of two hundred and ninety-one and 50/100 dollars (\$291.50) in full repayment of the sum of two hundred and seventy-five dollars (\$275.00) loaned by me to Mr. Mercer on November 16, 1905, and interest thereon at the rate of six per centum (6%) per annum for the period of one year from said date.

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## COMPLAINANT'S EXHIBIT No. 5.

Clarence B. Hight, Real Estate Investments, Colorado Building.

WASHINGTON, D. C., *November* 15, 1906.

Mr. F. D. McKenney, 1317 F St., N. W., Washington, D. C.

DEAR SIR: I have to acknowledge receipt, by courtesy of Mr. Wm. Hitz, of your letter to me of November 14, 1906; also by special delivery, of your letter to me of November 15, 1906 together with carbon copy of your above mentioned letter of November 14; also original agreement between Carroll Mercer and myself; also certified check on the Commercial National Bank of this city for Two Hundred and Ninety-one and 50/100 Dollars (\$291.50), which I am unable to accept for the same reason that I declined the currency when tendered me yesterday by Mr. Hitz, because said tender was made by Mr. Hitz under terms set out in your accompanying above mentioned letter of November 14, 1906 and not tendered me in accordance with the terms of the agreement existing between Carroll Mercer and myself. I therefore beg to return you herewith said certified check for Two Hundred and Ninety-one and 50/100 Dollars (\$291.50); also carbon copy of your letter to me of November 14, 1906; also original memorandum of agreement between Carroll Mercer and myself.

I furthermore beg to state that I am ready and prepared to deliver to you as representative of Carroll Mercer, a deed in fee simple to the lot in the city of Baltimore, State of Maryland, described in the said agreement between Carroll Mercer and myself, upon receipt by me of the money loaned Carroll Mercer upon the security of said lot, provided said money is paid to me in accordance with terms of said agreement.

Very truly yours,

C. B. HIGHT.

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## COMPLAINANT'S EXHIBIT No. 6.

This deed, Made this Fourteenth day of November in the year one thousand nine hundred and five by Belle X. B. Hight and Clarence B. Hight, her husband, of the City of Washington, District of Columbia, of the first part, and Carroll Mercer, of the same place, of the second part:

Witnesseth, that in consideration of Ten dollars and other good and valuable considerations the receipt whereof is hereby acknowledged the said Belle X. B. Hight and Clarence B. Hight do grant and convey unto Carroll Mercer, his heirs and assigns, in fee-simple, all that lot or parcel of ground situate, lying and being in Baltimore City, State of Maryland and described as follows, that is to say: Beginning for the same on the south side of Rayner Avenue at a point, from which a line drawn at right angles to Rayner Avenue would comprise the easternmost line of the lot now being described and the westernmost line of the lot adjoining to the eastward, said beginning



being at — the distance of twelve hundred and seven feet and two inches easterly from the southeast corner of Rayner Avenue and the Bloomingdale Road, and running thence southerly at right angles with Rayner Avenue one hundred and thirty feet to an alley twelve feet wide; thence westerly binding on the north side of said alley one hundred feet; thence northerly at right angles with Rayner Avenue one hundred and thirty feet to Rayner Avenue, and thence easterly binding on the south side of Rayner Avenue one hundred feet to the beginning.

160 Being the same lot as thirdly described in a Deed from William H. Rayner and wife to James Broumel, dated December 17, 1873, and recorded among the Land Records of Baltimore County, State of Maryland, in Liber J. B. No. 84 folio 391 &c.

For title of Belle X. B. Hight, see proceedings of "Isabella X. B. Hight vs. Laura V. King and others, in the Circuit Court of Baltimore City, and recorded among its Chancery Records in Liber M. W. No. 16 folio 22 &c., said lot being in Division F. 1 and known as lot No. 11.

Together, with the buildings and improvements thereupon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in any wise appertaining.

To have and to hold the lot and premises; above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Carroll Mercer, his heirs and assigns in fee-simple.

And the said grantors hereby covenant that they will warrant specially the property hereby granted and conveyed; and that they will execute such further assurances of said land as may be requisite.

Witness the hands and seals of said grantors.

BELLE X. B. HIGHT. [SEAL.]  
CLARENCE B. HIGHT. [SEAL.]

Test:

CHRIS COX DAWSON.

161 DISTRICT OF COLUMBIA,  
*City of Washington, To wit:*

I hereby certify, that on this 15th day of November in the year one thousand nine hundred and six before me, the subscriber a Notary Public of the District of Columbia in and for the City of Washington aforesaid, personally appeared Belle X. B. Hight and Clarence B. Hight, her husband, the grantors aforesaid and they acknowledged the foregoing Deed to be their respective act.

Witness my hand and notarial seal.

[SEAL.]

CHRIS COX DAWSON.  
*Notary Public, D. C.*

DECEMBER 19, 1906.

Frederick D. McKenney, Esq., 1317 F St. N. W., Washington, D. C.

DEAR SIR: Presuming from certain letters received from you upon the subject of this letter, that you are the representative of Mr. Carroll Mercer in all matters relating to this transaction, I hereby make tender to you as such representative, of a good and sufficient deed conveying to Mr. Mercer in fee simple estate, all that lot or parcel of ground situate, lying and being in Baltimore City, State of Maryland, and described as follows, that is to say: Beginning for the same on the south side of Rayner Avenue at a point, from which a line drawn at right angles to Rayner Avenue would comprise the easternmost line of the lot now being described and the westernmost line of the lot adjoining to the eastward, said beginning being at the distance of twelve hundred and seven feet and two inches easterly from the southeast corner of Rayner Avenue and the Bloomingdale Road, and running thence southerly at right angles with Rayner Avenue one hundred and thirty feet to an alley twelve feet wide; thence westerly binding on the north side of said alley one hundred feet; thence northerly at right angles with Rayner Avenue one hundred and thirty feet to Rayner Avenue, and thence easterly binding on the south side of Rayner Avenue one hundred feet to the beginning. This tender being made upon the express condition that I receive at the time of acceptance of tender, either  
163 from Mr. Mercer or his authorized attorney, the repayment of the sum named in a certain written agreement dated the Sixteenth day of November, Nineteen Hundred and Five, and signed by Mr. Mercer and myself, under the terms of which agreement I hold this property subject to the directions of Mr. Mercer as to a conveyance, in the event of the repayment of the loan made by me to Mr. Mercer within the time named therein, and subject to a forfeiture to me, in the event that said loan be not repaid by Mr. Mercer within the period named in the agreement.

All tenders of the amount named in the aforesaid agreement heretofore made by you in behalf of Mr. Mercer, have been refused by me on the sole ground that such tenders were accompanied by a statement on behalf of Mr. Mercer that he disclaimed all right, title and interest in and to the aforesaid property, and a denial that he had at any time been vested with or entitled to the same.

In closing, I would suggest that this tender will be held open for fifteen days for such action as you may see fit to take in the premises.

Very truly yours,

— — —

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## COMPLAINANT'S EXHIBIT No. 8.

Law Offices of Wayne MacVeagh, Frederic D. McKenney, John Spalding Flannery, William Hitz, 1317 F Street N. W., Washington D. C.

DECEMBER 19, 1906.

Clarence B. Hight, Esqr., Real Estate Investments, Colorado Building, City.

DEAR SIR: Referring to your letter of the 19th instant enclosing a deed dated the 14th day of November, 1905, wherein Belle X. B. Hight and Clarence B. Hight, her husband, are named as grantors, and Carroll Mercer is named as grantee, which deed purports to have been acknowledged November 15, 1906, before Chris Cox Dawson, a notary public of this District, which letter and enclosure were personally left by you, in company with Mr. P. A. Bowen, at my office this morning with a request that I advise you, in writing as to my determination and action in the premises;

Pursuant to your request I now return to you enclosed herewith said deed reiterating the statements heretofore made both orally and in writing to yourself and to your attorneys, to the effect that I have no authority from Mr. Mercer to accept from him or on his behalf delivery of said deed.

Yours very truly,

F. D. McKENNEY.

Enclosure I.

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## COMPLAINANT'S EXHIBIT No. 9.

This mortgage, Made this — day of November in the year nineteen hundred and five by and between Carroll Mercer, of the City — Washington, District of Columbia of the first part, and Belle X. B. Hight, of the same place of the second part:

Whereas, the said Carroll Mercer is justly and *bona fide* indebted unto the said Belle X. B. Hight, in the full and just sum of — dollars, being balance of purchase money upon the property herein-after described, for which sum he has this day passed his certain promissory note drawn payable to the order of the said Belle X. B. Hight, at — years after date with legal interest thereon payable half-yearly in the meantime.

And for the purpose of more effectually securing the prompt and certain payment of the aforesaid principal sum and instalments of interest thereon as they severally become due and payable, and the performance of the covenants herein contained, these presents are executed.

Now this mortgage witnesseth, that in consideration of the premises and of the sum of One Dollar, the said Carroll Mercer doth grant and convey unto Belle X. B. Hight, her heirs and assigns in fee-simple, all that lot or parcel of ground situate and lying in the City

of Baltimore State of Maryland and described as follows,  
Block. to wit:—Beginning for the same on the south side of  
Rayner Avenue at a point, from which a line drawn at  
right angles to Rayner Avenue would comprise the easternmost line  
of the lot now being described and the westernmost line of  
166 the lot adjoining to the eastward, said beginning being at the  
distance of twelve hundred and seven feet and two inches  
easterly from the southeast corner of Rayner Avenue and the Bloom-  
ingdale Road, and running thence southerly at right angles with  
Rayner Avenue one hundred and thirty feet to an alley twelve feet  
wide; thence westerly binding on the north side of said alley one  
hundred feet; thence northerly at right angles with Rayner Avenue  
one hundred and thirty feet to Rayner Avenue, and thence easterly  
binding on the south side of Rayner Avenue one hundred feet to the  
beginning.

Being the same property described in a Deed of even date herewith  
and intended to be recorded among the Land Records of Baltimore  
City prior hereto.

Together with the buildings and improvements thereupon, and the  
rights, alleys, ways, waters, privileges, appurtenances and advantages  
thereto belonging or in anywise appertaining.

Provided, that if the said mortgagor his executors, administrators  
or assigns, shall well and truly pay, or cause to be paid, the aforesaid  
principal sum of — dollars and all the installments of interest  
thereon, when and as each of them shall respectively be due and  
payable as aforesaid, and shall perform each and all of the covenants  
herein on his part to be performed, then this Mortgage shall be void.

And the said mortgagor doth hereby declare his assent to the pass-  
ing of a decree by the Circuit Court of Baltimore City or the  
167 Circuit Court Number Two of Baltimore City, for a sale of  
the property hereby mortgaged, in accordance with Chapter  
123, Sections 720 to 732 inclusive, of the Laws of Maryland, passed  
at the January session in the year 1898, or any supplements or addi-  
tions thereto. And in case of any default being made in the pay-  
ment of the aforesaid mortgage debt, principal or interest, in whole  
or in part, at the time or times limited and mentioned for the pay-  
ment of the same, as aforesaid, or in case of any default being made  
in any covenant or condition of this Mortgage, then the whole mort-  
gage debt hereby intended to be secured shall be deemed due and  
payable, and sale of said mortgaged property may be made by the  
trustee or trustees named in such decree as may be passed, as afore-  
said, for the sale of said property; or upon such default, as aforesaid,  
a sale may be made by the said party of the second part her executors,  
administrators or assigns, or by Harry E. Karr, his or their duly  
constituted Attorney or Agent, under Article LXVI, Sections 6 to  
10, inclusive, of the Maryland Code, (1888), Public General Laws,  
or under any other General or Local Laws of the State of Maryland,  
relating to Mortgages. And upon any sale of said property, under  
the powers hereby granted, the proceeds shall be applied as follows,  
to wit: first, to the payment of all expenses incident to said sale, in-  
cluding a commission to the party making sale of said property equal

to the commission usually allowed trustees for making sale of property by virtue of a decree of a Court having equity jurisdiction in the State of Maryland; second to the extinguishment of all claims  
168 of the party of the second part, her executors, administrators or assigns hereunder, whether the same shall have then matured or not and, third, the balance, if any, to the said party of the first part his executors, administrators or assigns.

And it is agreed, that, until default be made in the premises, the said party of the first part his executors, administrators or assigns, shall possess the aforesaid property upon paying, in the meantime, all taxes and assessments, public dues and charges levied or assessed, or to be levied or assessed, on said hereby mortgaged property, which taxes, mortgage debt and interest, public dues charges and assessments, and promissory note aforesaid the said party of the first part covenants to pay when legally payable.

And the said party of the first part further covenants to insure, and pending the existence of this Mortgage to keep insured, the improvements on the hereby mortgaged property to the amount of at least — dollars, and to cause the policy to be effected thereon to be so framed or endorsed as, in case of fire, to inure to the benefit of the said executors, administrators or assigns, to the extent of — lien or claim hereunder.

Witness the hand and seal of the said mortgagor.

\_\_\_\_\_. [SEAL.]  
\_\_\_\_\_. [SEAL.]  
\_\_\_\_\_. [SEAL.]

Test:  
\_\_\_\_\_.

169 DISTRICT OF COLUMBIA,  
*City of Washington, To wit:*

I hereby certify, that on this — day of November in the year one thousand nine hundred and five before me, A Notary Public of the District of Columbia in and for the City aforesaid, personally appeared Carroll Mercer the Mortgagor named in the foregoing Mortgage and he acknowledged the foregoing Mortgage to be his act. At the same time also appeared Belle X. B. Hight, the mortgagee aforesaid, and made oath in due form of law, that the consideration set forth in said Mortgage is true and *bona fide* as therein set forth.

Witness my hand and notarial seal.

\_\_\_\_\_.

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*Testimony on Behalf of Defendants.*

Filed September 10, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 26,799.

CLARENCE B. HIGHT

vs.

JOHN MARSHALL BROWN.

WEDNESDAY, April 1, 1908—10:30 o'clock, a. m.

Met, pursuant to notice, at the office of William Hitz, Esq., in the Hibbs Building, to take testimony on the part of the defendant in the above-entitled cause.

Present: Henry S. Matthews, Esq., Solicitor for the complainant; William Hitz, Esq., of Solicitors for the defendant, the complainant in proper person, and the Examiner.

Whereupon JAMES F. BARBOUR, called as a witness on the part of the defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. HITZ:

Q. Where do you live, Mr. Barbour? A. 1741 Rhode Island Avenue is my residence.

Q. How long have you lived at 1741 Rhode Island Avenue? A. Twenty years.

Q. Do you know Mr. Carroll Mercer? A. Very well.

171 Q. Did he at one time live near you on Rhode Island Avenue? A. Across the street.

Q. Did you know him then? A. Yes.

Q. And his family? A. Yes.

Q. What was the mode of his life at that time?

Mr. MATTHEWS: What time is this?

Mr. HITZ: When he lived opposite to him; I haven't definitely fixed that. Mr. Barbour says that he lived on Rhode Island Avenue immediately opposite him, and Mr. Mercer lived there at one time.

Q. (Continuing:) When was it that he lived there? A. Let me see. I should say ten years ago.

Q. Do you remember the number of his residence there? A. No, I could not tell. It is very easy to find that out; it now belongs to Mr. Harlan, Justice Harlan's son.

Q. Mr. Commissioner Harlan? A. Justice Harlan's son; he is Commissioner, I believe.

Q. Of the Interstate Commerce Commission? A. Yes.

Q. Was that formerly Mr. Carroll Mercer's property? A. Yes, I always understood so. I never looked at the title, whether it was his or his wife's, but it was one or the other.

Q. What sort of a house is it? A. Well, the house is as good as any in the neighborhood there, and it is a residential  
172 neighborhood. It is a house that \$50,000, I should say, was about its worth.

Q. What was Mr. Mercer's mode of life when he lived there? A. He was a man who lived, I suppose, about at the rate of twenty or twenty-five thousand dollars a year; a man considered well to do and always had the best that could be gotten.

Q. Well, when did he leave that or remove from there, if you know? A. Well, then, he went to the Philippines. He was in the service.

Q. In what service? A. In the Government service, in the army; he got an appointment and went to the Philippines. I think he was in the Commissary Department.

Q. Well, subsequent to the time he lived on Rhode Island Avenue, do you know whether or not he had financial reverses, loss of fortune? A. Yes; after he was mustered out of service he—Well, now, I can't say except just from his talking and his friends telling me about losing a good deal of money on the stock market.

Q. Well, now, did you see him when he returned from the Philippines? A. Not immediately after.

Q. Well, coming down now to the summer and fall of 1905, that is the date of these transactions, isn't it?

Mr. MATTHEWS: Yes.

173 Q. (Continuing:) Did you have acquaintance with Mr. Mercer at that time, and did you know anything about his habits in the summer and fall of 1905? A. Yes.

Q. Where was he living then? A. In the fall of 1905 he was living in a rooming house on 10th Street below E, and between D and E Streets.

Q. Was he at that time living with his wife and children, or was he separated? A. No, he was separated from them.

Q. How many children has he? A. Two.

Q. How old are they? A. One is nineteen, between nineteen and twenty, and the other is between sixteen and seventeen; Violetta is between nineteen and twenty and Lucy is, I should say, seventeen. I guess these ages on account of my daughter's age; she is right between them.

Q. Now, when he was living in this rooming-house on 10th Street, in 1905, did you see him from time to time? A. Yes.

Q. What was his financial condition and mode of life at that time? A. Well, very much different from what it had been before he was—Well, he was a man that didn't have anything at all, except this money that he gave me, a check of Mr. Hight's, that I had cashed, and then I distributed—dribbled that money out to him from time to time until it was finally exhausted.



174 Q. Yes, we will take up that transaction a little later, but, aside from this money he got from Mr. Hight and deposited with you, what was his means of support, if any? A. He had none.

Q. Was he then employed in the real estate office of Mr. Moore? A. Oh, yes; that is so, he was in Moore's office.

Q. Do you know what compensation he got from Mr. Moore? A. No, I do not.

Q. Do you know what his duties were with Mr. Moore, if any, or do you know anything about it? A. Yes; several times when I was in Moore's office it seems that he was addressing circulars; that is about all I ever saw him do.

Q. During this period of Mr. Mercer's life, what were his habits with respect to drinking, if you know? A. Well, latterly, in the last—Well, in the neighborhood of 1905 he was drinking very heavily.

Q. What were his habits, if you know, in respect to eating drugs or taking drugs of any sort? A. Well, he impressed me that he was doped most of the time. Now, this period that I say that Mercer was drinking very heavily, and, as I say, gave me the impression that he was taking this dope—and then the woman with whom he was rooming said he was. He would stay in——

Mr. MATTHEWS All this is subject to that objection, you know, that we had in the beginning; subject to our understanding.

Q. Mr. Barbour, do you know anything of the transaction  
175 that occurred between Mr. Mercer and Mr. Hight in November, 1905, during the time which you have described when Mr. Mercer was in Moore's office and living in this place on 10th Street? Now, if you know anything about that transaction, simply state what it is you do remember. A. Well, he came to me and said that—handed me Mr. Hight's check.

Q. For how much? A. \$180, I think it was, and said, "I want you to be my guardian and hold this for me, and give it to me as I need it, but not as I ask for it."

Q. What did you do with that money? A. I deposited it in bank and gave it to him from time to time in various amounts, I suppose, for two or three months; a couple of months, I guess it was.

Q. During this period when you were giving him this money from time to time was his condition with respect to drinking, and other things, such as you have described a few moments ago? A. Yes.

Q. How long after this did he remain here, if you know—what became of him? A. He went from here to New York, but how soon or how shortly after this transaction I can't say, whether it was one month or less than a month; I think it was less than a month.

Q. Well, as I understand you to say, you doled out this money to him for the next two or three months? A. Yes.

176 Q. And then do you mean to say that perhaps a month after you stopped giving him this money he went to New York? A. Yes, I think in less than a month I lost sight of him. After I had distributed this—Wait a minute now. After I had paid

this money he stopped at this rooming-house until the woman finally put him out.

Q. Did you pay his rent? A. I paid his rent.

Q. What was the amount of his rent? A. I don't know; something in the neighborhood of twenty or twenty-five dollars.

Q. That he owed this woman? A. Yes.

Q. What did he do in New York, if you know? A. Well, I don't know except from hearsay. I heard, oh, say, six months afterwards that he had gotten employment with a railroad there, a street railroad, but that is only hearsay; I don't know.

Mr. HIRTZ: I think that is all I want to ask.

Cross-examination.

By Mr. MATTHEWS:

Q. Mr. Barbour, when did you first meet Mr. Mercer? A. I should think about fifteen years ago. Shortly after I—I should say fifteen years ago.

Q. Did you know his wife? A. Yes.

Q. Was he married at that time? A. Yes.

177 Q. Now, you state that you knew Mr Mercer personally and very intimately? A. Very intimately; slept in the same room with him in the country; at my place in the country.

Q. He was in the Marine Corps at one time, was he not, Mr. Barbour? A. At one time, yes, sir.

Q. Did he resign from the Marine Corps when he married—shortly after his marriage? A. Shortly after he married he resigned from the Marine Corps.

Q. Did you know him when he was in the Marine Corps? A. Not intimately.

Q. Did he have any estate other than his pay in the Marine Corps at the time that he was in the Marine Corps, and when he married? A. That I don't know.

Q. As a matter of fact, Mr. Barbour, is not it so that all of the money that Carroll Mercer had was his wife's money? A. That I don't know.

Q. What was your impression? A. His wife was reputed a very rich woman, but I didn't know anything about Mercer's financial condition until here in the latter part of my acquaintance with him, in the last three or four years.

Q. You spoke of his losing large sums of money. As a matter of fact was not that part of his wife's estate and not his own money?

A. Well, when I mentioned that, that was rumor only; I  
178 never saw him lose large sums of money, and I understood he did; it was common rumor that he did lose large amounts of money. Now, how true that is I can't state; it is mere rumor.

Q. You don't know in whose name that property was that you have just testified to on Rhode Island Avenue, where they lived, opposite to you? A. No, I do not.

Q. As a matter of fact, do you know anything of Mr. Mercer's personal financial standing? A. Well, only from his general life,

his way of living, his maintaining of the house, and giving entertainments and living in luxury and style, that is all.

Q. Do you know who paid for those entertainments? A. I do not. I only know I participated in some of them.

Q. Did you ever know that he was reputed as a man of means at all, at any time during your acquaintance with him? A. That is a hard question to answer.

Mr. MATTHEWS (To the Examiner): Just put the question to him again.

Mr. HITZ: He said he lived like a man of means.

Mr. MATTHEWS: I am talking about it the way that question is asked.

A. I would have to give the same answer. At that time I had no business transactions with him. He lived like a man of means.

Q. He was living with his family at that time, was he not? A. He was living with his family.

Q. Now, after he resigned from the Marine Corps, what business was he engaged in? A. Well, after he resigned from the Marine Corps he was not engaged in any business for a long spell—for a long time. The only business that I ever knew him to be engaged in was in perhaps 1904, in 1903 or 1904, he was the agent for a champagne house. You understand, that after he resigned from the Marine Corps he was then appointed again during the Spanish War.

Q. Yes, I will get to that; that was long prior to his appointment in the Spanish War. A. Well, between his resignation and his appointment to the Spanish War I never knew him to be engaged in any business.

Q. How long was he in the Philippines in this appointment that you have spoken of? A. I should say two or three years.

Q. If you remember it, to what time would that bring it? A. No, I can't say.

Q. Could you approximate it? A. I should say it was a year after the treaty; when this Government settled for the Philippines.

Q. A year after the Treaty? A. Yes.

Q. This Government did not take possession there until after the Treaty, A. Well, do you recall what year the Treaty was?

180 Mr. HITZ: The Treaty was in 1898 or 1899.

A. I recollect it because my brother-in-law was the charge here for the French Government. You say this was in 1898?

Mr. MATTHEWS: In 1898.

A. I should say about 1900, then.

Q. What were his habits at that time? A. You mean after he returned from the Philippines?

Q. Yes, just after his return from the Philippines. A. Why, immediately after his return, as I knew him then, his life was the same as before he went to the Philippines.

Q. What was that? A. Lived with his wife; lived in good style and in good comfort, prosperous.

Q. What were his habits, though? A. Oh, well, ordinary habits; he was not a heavy drinker then; he drank; he would take his drink like a gentleman, and I never saw him drunk then.

Q. You never saw him refuse a drink, did you? A. Well, now, I was not present on all the times when a drink may have been offered to him.

Q. Whenever you were present you never saw him decline a drink? A. No.

Q. Did you ever see him intoxicated at that time? A. No.

Q. You say he was living with his wife and family — that time? A. Yes.

181 Q. When he returned from the Philippines what business did he engage in? A. None that I knew of.

Q. How long did he remain out of employment? A. I don't know.

Q. When did he take up the agency for this champagne company that you have just testified to? A. Well, I should say sometime in 1903.

Q. Was he possessed of all of his faculties at that time? A. Yes.

Q. Do you know what company it was that he represented? A. I think it was the Moet and Chandon people; that is my best recollection.

Q. Do you know what salary he was getting then? A. I do not.

Q. What was his mode of life at that time? A. He was not living with his wife when he had this champagne agency.

Q. Were they legally separated? A. That I don't know. Oh, yes, I know they were not legally separated; no divorce proceedings at all.

Q. Where was she living at that time? A. I think she was living in New York. The children were at school outside of Philadelphia?

Q. Boarding school? A. At boarding school.

Q. Do you know who was paying the expenses of the family at that time? A. No, but I know from the Mother Superior of  
182 the convent that the children were being taken care of by the Order; they were not being paid for; it is a Sacred Heart convent.

Q. Now, Mr. Barbour, what was the cause of separation between Mr. Mercer and Mrs. Mercer? A. That I don't know.

Q. Did you ever hear.

Mr. HIRTZ: Mr. Matthews, don't you think that we are going far into the personalities of Mr. and Mrs. Mercer? I don't see what she has to do with this thing. Of course there is no use of putting a lot of stuff in there and then scratching it out.

Mr. MATTHEWS: No, it all has its effect, what I am doing.

Mr. HIRTZ: You have asked him the cause of the separation, and he says he don't know.

Mr. MATTHEWS: Well, if I knew it was anything to her discredit I would not ask the question.

Mr. HIRTZ: Well, he says that he doesn't know; there was not a legal separation, but there was an actual separation, the cause of which he doesn't know.

The WITNESS: No.

By Mr. MATTHEWS:

Q. You never heard of the cause of the separation? A. No.

Q. You had no business dealings with Mr. Mercer during 1903?

A. No. Yes, I did. I bought some champagne from him  
183 when he was in the champagne business.

Q. You would not have hesitated to have had any business dealings with him, would you, on account of his habits, or anything of that kind? A. No.

Q. Do you know whether he was a member of the Metropolitan Club at that time? A. He was. Now, 1903—Yes, I think he was in 1903. Excuse me one minute. I suppose that both of you gentlemen will protect me if Mercer should come down here and read this testimony, when I say that he was drinking and doped at that time?

Mr. MATTHEWS: Well, you haven't said it in answer to any questions that I have asked you, so Hitz will have to protect you.

Mr. HITZ: Yes, I will protect you.

The WITNESS: Mercer is a big fellow.

Mr. MATTHEWS: I know he is a good sized man.

By Mr. MATTHEWS:

Q. Mr. Barbour, Mr. Mercer during this time ever ask you for a loan? A. During which time you speak of?

Q. During this time prior to 1904, and during 1904, ever borrow any money from you. A. No.

Q. Ever try to borrow any money from you? A. I had to pay some money for him; I didn't have to, but I did.

Q. Well, state the circumstances, will you, of that trans-  
184 action? A. I don't think we ought to go into that; I don't think I ought to have to go into that transaction; it was a personal one. Now, let me ask your advice about this.

Q. What was the date of that? A. This was in August of 1905.

Mr. HITZ: Now, then, I would suggest, Mr. Matthews, whatever this transaction is—I don't know to what it refers——

Mr. MATTHEWS: Well, let him tell us without putting it down, and then I can see whether I will waive the question or not.

Mr. HITZ: Well, I think that is a fair thing.

(The witness and counsel here repaired to the adjoining room for a conference, after which they returned.)

By Mr. MATTHEWS:

Q. What was that transaction? A. He had incurred an indebtedness and requested me to pay it, which I did.

Q. Do you remember the amount you paid? A. Less than \$70.

Q. Have you ever been repaid that sum? A. Yes.

Q. By whom? A. By Major Mercer.

Q. By Major Mercer? A. Yes.

Q. That is Carroll, I suppose. A. Yes.

185 Q. Mr. Barbour, do you know whether he was drawing any pay as a retired officer of the Marine Corps at this time?

A. I think he was not. I know he was not, because he was mustered out of the volunteer service; that was his last appointment.

Q. But as a marine officer? A. I don't know; I think not, though.

Q. Was he a member of the Metropolitan Club at that time? A. In 1903?

Q. 1905 this transaction was. A. I think not.

Q. Was he a member of any club at that time? A. Not that I know of.

Q. Wasn't he a member of the club of Philadelphia, I think you call it the Fishkill, or some such name as that? A. No, you are thinking about the Fish House Punch.

Q. Well, it is all the same thing. A. I don't know.

Q. What were his habits at that time, in 1905, in August? A. He was drinking very heavily.

Q. Where was he living then? A. In August, 1905, he was out in the country with me part of the time.

Q. Where was he living the other part of the time? A. In August, I can't say, but I think it was in September sometime when  
186 he took this room in this lodging house on 10th street.

Q. Wasn't he at that time in the office of Shepard & Jenkins, on G street? A. No.

Q. Do you ever remember his being employed in that office? A. Yes, but I think that was in the spring of 1905.

Q. What were his duties there? A. He had a desk only there, and transacted his champagne business. He had no duties with Shepard & Jenkins.

Q. What was his mode of dress at that time, in August, 1905? A. Well, he showed his impoverished condition; his suit was very bare, and he was not dressed as well as he had been prior.

Q. He was dressed as you would expect a gentleman to dress, was he not? A. Well, whenever I saw him on the street he always had all of his clothes on.

Q. I mean in the character of his clothes. A. The character of his clothes were not such as I had been accustomed to see him in in his time of prosperity.

Q. Nothing about his appearance to indicate that he was a tramp, was there? A. Oh, no, I could not say that.

Q. Now, when did he pay you back this \$70 that he borrowed from you. A. I took it out of this money that I—Mr. Hight's check; reimbursed myself from that.

187 Q. Did he tell you to do that? A. Yes; said "If there is anything I owe you take it out of this check and hold the balance for me, and give it to me as I need it."

Q. Now, how did you disburse that check, the balance of that check, for \$180? A. Why, I gave it to him in \$5 sometimes, \$10 sometimes, and then I paid his room rent out of it.

Q. Do you remember how much you paid for room rent? A. I think it was \$22.

Q. Now, what did that include, board and lodging? A. No; only included his room. I don't know where he got his meals at all. I think it was only for his room. I think it was \$2. a week.

Q. You say that he went there in September, to that 10th street house? A. That is my recollection, in September.

Q. Now, when he received that check for \$180 was he in arrears of board at that time? A. No.

Q. He had paid his board up? A. I don't think he was there then. My recollection is that it was in November I got the check.

Q. Where was he living then? A. When, in November?

Q. Yes. A. At this rooming house.

188 Q. You say you don't know whether his board had been paid up at the time you got the check? A. That I don't know. He didn't have any board there; he only had a room.

Q. Well, his room? A. That I don't recall.

Q. Did he request you to pay his board out of this money? A. Yes.

Q. Do you remember at what time he requested you to pay the board? A. I think it was sometime in January.

Q. Where was he living then? A. At this rooming house.

Q. In January? A. Yes.

Q. I understood from your examination in chief that he left Washington about one month after the receipt of the check.

Mr. HIRTZ: He explained that in his direct examination by saying he thought that he had left Washington one month after he had disbursed the last of this money to him.

The WITNESS: That's right.

By Mr. MATTHEWS:

Q. After you had disbursed this money to him? A. Yes.

Mr. HIRTZ: One month after that Mercer disappeared, as far as he knows.

By Mr. MATTHEWS:

189 Q. Now, Mr. Barbour, you testified in your examination in chief that Mr. Mercer used drugs. Did you ever see him use any drugs? A. I don't think I testified that he used drugs. I think I said that he appeared to be as a man who had been using drugs, and that the report was from where he was rooming that he did; but I never saw him actually take a drug.

Q. Well, what was his condition at the time that he asked you to take this check and hold it for him, hold the money for him—Did you think he knew what he was doing then? A. Why, assuredly not.

Q. Didn't know what he was doing? A. I didn't think so. I think the man was helpless from either drinking or drugs; he was not responsible for what he was doing.

Q. And still you took the check from him to disburse it for him under those conditions? A. I took the check to save it for him, and to save him as much as I could, because he was in no condition to handle the money himself; he was as helpless as a child.

Q. He remembered that he owed you \$70, didn't he? A. No.

Q. Didn't you testify that he told you to deduct your \$70 from this amount? A. No; I testified that he told me to take—reim-



burse myself or to take out of this amount anything that he owed me or he might owe me.

190 Q. Didn't he tell you to use the rest of it as he would call on you for it? A. He told me to give him the money as he called for it from time to time.

Q. Did he appear to be knowing what he was doing then? A. At times, yes, but most of the time——

Q. When he gave you this check with that request? A. Well, he was drinking, drunk—half drunk then.

Q. You thought that he knew what he was doing in this transaction, didn't you?

Mr. HIRTZ: What do you mean by "this transaction?"

Mr. MATTHEWS: I am referring to the check now.

Mr. HIRTZ: He has already said he didn't think he knew what he was doing?

The WITNESS: No, I don't think that was a very sensible thing for Mercer to have done, a man who has lived as he has lived and had transactions with as many people as he had, and a bank account, and to come and give me a check and ask me to hold it for him and be his guardian; I would have taken that check to the bank and checked it out myself.

Q. Did you suggest that course to him? A. I did not.

Q. Did he ever speak to you at this time, just as this period, of any property that he had of any kind whatever? A. He spoke to me about some inheritance that he would get at the death of an uncle, and wanted to know if I would buy it from him.

Q. He approached you to buy it? A. No; he asked me if I would advance him or loan him some money on it.

191 Q. How much money did he want? A. He wanted \$500.

Q. What did you tell him? A. Well, I told him no, I could not do it, and he says, "You go and telephone to Mr. McKenney and he will tell you it is all right; that this legacy is all right."

Q. Did you telephone to Mr. McKenney? A. I did not.

Q. Why? A. Well, because I didn't want to have anything to do with the transaction. My recollection he told me it was \$3,000, and that he would will it to me; that he wanted to borrow \$500 from me on this legacy. Well, in my opinion, I didn't think Mercer knew entirely what he was doing, and I didn't feel like going into a transaction with him in his condition, because I believed at the time if he had gotten the \$500 that it would not have done him or anybody any good, and have done him harm.

Q. You didn't see anything wrong about the transaction, though, did you, to borrow \$500 on this legacy? A. Well, it is a transaction that I would not go into with anybody.

Q. Was it different from borrowing \$500 on a house, as a loan? A. Very different.

Q. In what respect, Mr. Barbour? A. Why, a man that borrows \$500 on a house, he gives you something tangible, which you  
192 can dispose if you don't want to carry it yourself.

Q. Then, you thought it was a poor investment? A. Not at all.

Q. You were satisfied as to the security? A. No, I didn't look into the security; I didn't investigate it at all, because, as I say, I didn't think that Mercer was capable of making a sound business transaction, and that, to have gone on and to have received \$500, would have been to no advantage to him in his condition at that time.

Q. Then, your only objection was as to the use that Mr. Mercer would put this money to? A. Oh, no, I didn't say that.

Mr. HIRTZ: He has already said that his objection was because of the condition of Carroll Mercer at the time.

The WITNESS: Yes. I don't want any of my remarks to be a reflection upon anybody else, but it is a transaction I would not have gone into with him, or with you, or anybody else, in the condition he was in.

By Mr. MATTHEWS:

Q. On account of Mr. Mercer? A. On account of his condition; I don't think he was capable of making a good business transaction at that time. No, not only Mr. Mercer, but anybody. I would not have gone into it with anybody that I had known personally as I had known—as well as I had known Mercer.

Q. Suppose you hadn't known Mr. Mercer? A. Well, then I would not have considered the proposition at all. I would not have gone into a proposition of that kind without knowing with  
193 whom I was dealing. Here was a man who was in a stress; he was a man whose tastes had been educated to refinement and luxury; he had this condition of separation from his wife and his family; he was devoted to his children, and with no money and drinking; he was not capable of making any kind of a transaction.

Q. Do you know of any effort that Mr. Mercer made to get employment anywhere, of your own personal knowledge? A. Yes; I got him employment at Mr. Moore's office.

Q. What time was that? A. That was in August or September, 1905. I called up Mr. Moore on the telephone and——

Q. How long was he there? A. About three months I think; in the neighborhood of three months.

Q. You thought he was capable of performing his work there, didn't you? A. When I asked Mr. Moore to take him?

Q. Yes. A. Well, I didn't think he would have very much work there to do. As I explained to Moore, I said, "Now, you have Mercer in your office, and on account of his wide acquaintance with rich people and well-to-do people, I think that it may help your business." I don't think he had very much work to do at the office.

Q. Then at that time he was a man who moved in circles of wealth—had rich friends and a wide acquaintance among them?

A. Yes. His friends still stuck to him.

194 Q. You would not have recommended him to Mr. Moore as a clerk in his office unless you had thought that he was capable of performing the duties of a clerk, would you? A. Well, as I have just stated, that he was not to perform any duties of a clerk.

Mr. HIRTZ: He was a professional beauty.

The WITNESS: Yes, a professional beauty, if you can use that; as people have come to me and said—life insurance people—and said, "You introduce me to Mr. Matthews or Mr. Hitz and I will insure him, and I will give you half the commissions," and I walk along and introduce you.

Q. Then he was a man who was capable of making a living at that time, and he was a valuable man, in your opinion, to Mr. Moore? A. As an advertisement.

Q. What kind of an advertisement do you mean, Mr. Barbour?

Mr. HIRTZ: Oh, Matthews, he has gone into that.

A. Well, he was a man of wide acquaintance, and he could introduce into Mr. Moore's office men of capital.

Q. Then, in your opinion, he still had influence with men of capital? A. I can't say what influence he would have. He had an acquaintance with men *to* capital.

Q. He had a great many friends here in the District amongst influential men? A. He had many friends in the District.

Q. Now, how frequently would you see him in Mr. Moore's office? A. Two or three times a week while he was there.

Q. What did he seem to be doing while he was there? A. Addressing cards, the only thing I ever saw him do in the office; he had a desk in the rear of Mr. Moore's office, in the rear room, and he would be addressing his cards, "Carroll Mercer, with David Moore," sending these to his different friends.

Q. Was he there in November, 1905? A. Let me see. I think not.

Q. You are not sure about that, though, are you? A. I don't think he was in Moore's office after he received this money, or perhaps a week before he received this money.

Q. Up to within a week, then, is your best recollection? A. I won't say. The date of the receipt of this money is the 17th of November, is it?

Q. Yes. A. Well, I don't think he was in Moore's office in November.

Q. You know of the subject of this litigation, do you not? A. Yes.

Q. Do you, of your own personal knowledge, know of any of the facts surrounding that transaction?

Mr. HIRTZ (to Mr. Matthews): Do you mean this transaction?

Mr. MATTHEWS: I mean the transfer of this. Of your own personal knowledge, do you know anything of the facts surrounding that transaction?

A. Nothing further than receiving his check for \$180.

Q. That is all you know about it? A. Yes.

Q. You only know the history of that check from Mr. Mercer?

A. Yes.

Q. What did he tell you that that check was for when he gave it

to you? A. He told me he had gotten this money on that legacy that he asked me to loan him some money on.

By Mr. HIRTZ:

Q. Do you know whether the family of Mr. Carroll Mercer, the Carrolls, and the others on his own side, apart from his wife, were or not people of means and high position? A. They are.

— — —.

Signature of witness waived by consent of Counsel.

J. ARTHUR LYNHAM, *Examiner*.

197 Thereupon DAVID MOORE, called as a witness on the part of the defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. HIRTZ:

Q. Mr. Moore, in what business were you engaged in November, 1905? A. Real estate.

Q. Where? A. 1328 New York avenue.

Q. Was Carroll Mercer employed by you at that time? A. He was.

Q. At what salary? A. I think I paid him \$7. a week.

Q. What did he do for you? A. He simply made out my property cards and sent out—or addressed envelopes.

Q. Well, what character of work is that? A. Very simple.

Q. Did you entrust him at that time with any business transactions or negotiations of any importance? A. I did not.

Q. Why not? A. Well, he was not capable.

Q. Was he drinking at that time, to your knowledge? A. When he first came with me, which I think was in September, he was not.

198 Then he started and he drank to excess; also, I think, was under the influence of drugs.

Q. Did you ever see him take a drug? A. I have seen him take some stuff; I could not testify it was a drug, but I noticed the effect of it.

Q. What was it? A. Well, simply he would become sleepy and drowsy, and would sit at his desk like that (Indicating) and go off into a drowsy condition.

Q. How long did he remain in your office? A. He was in my office, I think, from September until shortly after Christmas.

Q. Why did you get rid of him? A. I could not afford to keep him. He could not do what work I put on him to do.

Q. Was there a man named Baker employed in your office at that time? A. Yes, sir.

Q. In what capacity? A. Salesman.

Q. What sort of a salesman was he? A. Real estate.

Q. Was he a better business man than Mercer? A. Oh, yes.

Q. He was capable of being entrusted with business? A. Oh, yes.

Q. Did either Mr. Baker or Mr. Mercer ever attempt to raise money from you upon an inheritance of Mr. Mercer? A. Mr. Baker first approached me on the subject of purchasing this interest of  
199 Mr. Mercer's, and advised me that the interest was worth \$3,000 at the death of some relative, who it was I don't know.

Q. In whose estate was it? A. I don't know.

Q. But it was some relative of Carroll Mercer? A. Yes, and he offered to sell it to me for \$500, and I declined. Then he took me back and had Mercer go over the details of the matter, to tell me what it was; that it was some estate that he had an interest in which was subject to a life estate, and I told Mr. Mercer—Major Mercer and Mr. Baker, both, that I would have nothing to do with it.

Q. Why not? A. Well, I didn't think that Major Mercer was competent to transact a contract—make a valid deed or contract.

Q. Well, why wasn't he competent? A. On account of his habits.

Q. And, because of these habits, you, a short time afterwards, got rid of him, is that right? A. I did.

### Cross examination.

By Mr. MATTHEWS:

Q. Mr. Moore, what were the arrangements you made with Mr. Mercer in regard to commissions on any sales he would make? A. None whatever.

Q. You made no arrangement with him in regard to that? A. No, sir; simply a salaried man. At the request of Mr. Bar-  
200 bour I took him in my office.

Q. What was his general appearance then? A. His appearance at first was very good.

Q. How was his dress? A. His dress was good.

Q. Now, you say when he first came to your office his habits were correct? A. All right, sir.

Q. Would he be there regularly? A. Yes, sir, at first he would.

Q. Up to about how long? A. Up to about the first month, I would say.

Q. Was he ever drunk in your office? A. Yes, sir.

Q. Now, he mentioned this matter to you himself at one time, the sale of this legacy, didn't he? A. No, sir, only through Mr. Baker. Mr. Baker then asked me to come back to speak to Mr. Mercer about it, and I went back in the rear office, and Baker then made the proposition. He said he didn't know exactly what it was, but wanted Mercer to explain to me what it was, and at that time Mercer was under either the influence of liquor or drugs, and I would have nothing to do with it, and I so told Mr. Baker.

Q. Well, what did Mercer tell you of the character of this legacy? A. Well, he had a legacy that was subject to the life estate of some person, who it was I don't recall, and I don't know what the property was.

201 Q. Do you remember the amount of the property? A. Only the statement made by Mr. Baker that it was worth \$3,000.00 and by Major Mercer.

Q. Well, you saw a letter at that time confirming that statement, didn't you? A. No, sir, not that I recall.

Q. No letter from Mr. McKenney about that time? A. No, sir, not that I recall.

Q. Didn't Mr. Baker have some papers with him showing something about this transaction? A. No, sir, not when he talked with me on it.

Q. Now, Mr. Moore, what do you know about this transaction between Mr. Hight and Mr. Mercer? A. Absolutely nothing.

Q. Do you know anything about Mr. Frederick Barbour being requested to take title to a lot in Baltimore that figured in this transaction? A. No, sir. The transaction, while it may have been made in my office, never went through my books. I had nothing to do with it, and, in fact, I would not have had anything to do with it.

Q. You would not have hesitated to have bought this legacy upon the representations of Major Mercer, if you had not been familiar with Major Mercer's habits, would you? A. Well, I can explain that, if you will allow me. Just the day before this proposition was presented to me by Mr. Baker I got a telephone message from Major Mercer at the Shoreham Hotel, and asked me to come up  
202 there to see him; that it was very important. I went up there and I found him intoxicated, and the propositions that he made me at that time were so unreasonable that I did not consider the man right.

Q. What were those propositions? A. He told me he had an income of twelve thousand dollars a year; that it was a secret fund; that he didn't want anybody to know anything about it, and that he wanted to engage an apartment, and he wanted to obtain a furnished apartment in, I think it was, "The Rochambeau," or one of those apartments, and he didn't desire anybody to know where he was located. He intended to have his valet, and that he was going to surprise people in Washington to know how he was living, and would not know where he was or how he was living.

Q. Who was present at that conversation? A. Nobody but Major Mercer and myself.

Q. You say that took place at the Shoreham Hotel? A. Yes, sir.

Q. Was he living up there then? A. I don't know where he was living.

Q. Where did the conversation take place—what part of the Shoreham Hotel? A. In the writing room; in the men's writing room, down in the basement there.

Q. Did he look to you as if he was living there then? A. No; he simply looked to me as an intoxicated man, Mr. Matthews.

203 Q. Did he have his hat on? A. Yes, sir.

Q. What did he want you to do the day you came up there—just to impart this information to you? A. And to obtain this apartment for him.

Q. You came to the conclusion he was drunk? A. Oh, yes; no question in my mind.

Q. Did he have the appearance of being drunk? A. Well, as you would term "three sheets in the wind."

Q. Did you know that he didn't have this secret fund? A. I didn't know anything about his affairs at all, except from what Mr. Barbour told me about the condition that he was in when I took him in my office.

Q. Then, you got your information as to his condition from Mr. Barbour? A. Yes.

By Mr. HIRTZ:

Q. Now, you mean financial condition, don't you? A. Yes, his financial condition.

By Mr. MATTHEWS:

Q. You don't recall, you say, Mr. Moore, the fact that a request was made of Mr. Frederick Barbour, who I think was in your office in November, 1905—— A. Yes.

Q. (Continuing:) To take title to this Baltimore lot from Mr. Mercer? A. No, I don't recall that.

Q. Do you think you could have heard that and forgotten it? A. Oh, of course; possibly.

Q. You don't recall that upon your suggestion Mr. Barbour declined to take title to this property? A. I do not.

Q. Do you know where Mr. Mercer went after he left your employment? A. No, sir, never have seen him or have heard from him.

Q. His name was on these cards that you sent out, wasn't it? A. Yes, sir.

Q. What was the object of that? A. The object of that was to bring to the office people of his acquaintance, so that we could take hold of them and handle them, and possibly makes clients of them.

Q. Did you know anything about his acquaintances? A. The only one that we ever had any transaction with was the Japanese Minister Aoki, was it? They were considering purchasing a legation site here and that was the only occasion, when he introduced me and one of my salesmen to the Japanese Minister or his Secretary, I forget which.

Q. Do you remember what month that was in? A. That was in October.

Q. What part? A. The early part I think; I would not be positive of that; I think so; it has been sometime ago.

Q. Do you know whether he had a vast acquaintance among people who would probably become customers of yours? A. That was the only case where there was a possible chance, that I can recall, of making a business transaction.

Q. Do you know anything of his friends? A. Only from what Mr. Barbour told me.

Q. You say that he introduced you to the Japanese Minister? A. Yes, or his Secretary, I am not sure. I know his name was Aoki.

Q. Then, he was a man of some social standing in this community at that time? A. So the general report was, from what I could learn.



Q. You thought so, otherwise you would not have had the name of a drunkard on your card, would you? A. No.

Q. Did that name continue on your cards until he left you? A. Yes. It was a card simply made up with his name with David Moore.

Q. That was under your control, though? A. Yes, sir.

Signature of witness waived by consent of Counsel.

J. ARTHUR LYNHAM, *Examiner*.

(At this point an adjournment was taken until further notice.)

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THURSDAY, May 7, 1908—4 o'clock p. m.

Met, pursuant to notice, at the office of William Hitz, Esq., in the Hibbs Building, to resume the taking of testimony on the part of the defendant in the above entitled cause.

Present: Henry S. Matthews, Esq., Solicitor for the complainant; William Hitz, Esq., of solicitors for the defendant, and the Examiner:

Whereupon Mrs. I. H. WALLERSTEIN, called as a witness on the part of the defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. HITZ:

Q. What is your address? A. 229 Pennsylvania Avenue, Southeast.

Q. Where were you living in November, 1905? A. 431 Tenth Street, Northwest.

Q. How long did you continue to live there? A. Until the next May after that.

Q. That is, May, 1906? A. Yes, sir.

Q. Do you know Mr. Carroll Mercer? A. Yes, sir.

Q. Did Mr. Carroll Mercer have a room in your house or your flat in November, 1905? A. Yes, sir.

Q. How long did he stay there at that time? A. He came to my house in August and stayed there up until he left, that was in May, the first of May.

Q. That is, he stayed there from August, 1905, to May, 1906? A. Yes, sir.

Q. Well, when Mr. Mercer was rooming in your house during this period did you see him frequently? A. Oh, yes, quite frequently?

Q. Did you see him in the day time, as well as in the evening? A. Yes, sir.

Q. What was his condition during this period with respect to drinking and drunkenness? A. Well, I hardly know how to answer that. He was either drunk or under the influence of some drug most of the time he was there. He would stay in his room—shall I tell you?

Q. Yes. A. He would stay in his room as long as three and four days at a time and never go out to get anything to eat, or anything, and, of course, I used to be afraid he would die, or something. I opened the door quite often to see, and he would be there lying in bed, in a heavy sleep like, and snoring.

Q. Would he have anything to say on these occasions, Mrs. Wallerstein? A. No; he seemed perfectly dead like, you know, and I would ask him if there was anything I could do for him. I used to ask him often if there was anything I could do for him, 208 and he never would make no answer, you know, because I was afraid he would die there in the room, and I didn't know what to do.

Q. Mrs. Wallerstein, did you at this time ever see Mr. Mercer when he was clearly drunk, in addition to these times when you speak of him as being in a stupor? A. Oh, yes, I have seen him come in the house so staggering drunk that he could not get in the hall without the janitor helping him, and there used to be some gentleman come with him, a tall, slim gentleman, once in a while. He didn't drink much whiskey in the house; it was after he got through drinking whiskey outside that he would come in and take those pills, or whatever they were.

Q. Now, did he eat in your house? A. No, sir, he didn't eat there.

Q. Where did he eat, if you know? A. I don't know where he eat his meals; he didn't seem to eat very much.

Q. How much rent did he pay you? A. Two dollars a week.

Q. Did he pay it? A. No, Mr. Barbour paid his rent to me. I think the Major paid me, maybe, about two weeks or three weeks, probably, while he was there; but Mr. Barbour got the room for him and agreed to pay for it if he didn't.

Q. Well, now, he was at your house from August until May. Do you remember whether these periods of his taking drugs were more frequent at one time of this stay than another?

A. Yes. Just after he left Moore—you know he was with 209 Mr. Hill a little while, I think three or four weeks, and just after he left there he seemed to be worse than ever.

Q. About what time was that? A. That was along in cold weather, in the winter time.

Q. Well, can you place that definitely? A. Well, I know once in December he was just on an awful big drunk; that was along about the first of December.

Q. Did any of Mr. Mercer's family ever come there to see him, that you know of? A. Yes sir.

Q. Who? A. His two daughters.

Q. Did they see him? A. They saw him on one or two occasions, and on one occasion his daughter came there and I wouldn't let her in because he was in one of those stupors and I didn't want her to see him. And also Mr. Barbour's son called there one day after him and I would not let him in either.

Q. Why not? A. Because he was in that condition; I didn't want them to see him. I thought it was no use letting them in, because he could not recognize anybody.

Q. During this time was Mr. Mercer in a condition to transact business? A. No, sir.

Q. Why not? A. Well, he was under the influence of a  
210 drug; it was not whiskey he was drinking then, it was a  
drug he was taking, because he had no whiskey in his room.  
I used to look for it.

Q. Did you clean his room? A. Yes, sir, I had no servant and I used to clean his room, and I didn't get in his room for two or three days when he was in there to clean it; he was lying in bed.

Q. How often did this sort of thing happen? A. Well, when he first came there I think it was two or three weeks that he behaved himself all right, and then he came home drunk and lay around in his room, and kept it up then quite frequently all of the time he was there. I think, when we left there, we turned the flat over to another party, and left him there in the flat, but he went the same week, and, why, he then had been in the house two or three days and had not been out, and his face would get as red and all broken out in sores when he was in the house that way.

#### Cross-examination.

By Mr. MATTHEWS:

Q. Mrs. Wallerstein, how long have you been keeping a boarding house? A. I never kept a boarding house. We took the flat. Mr. Barbour, you know, owned that flat down there and I had more rooms than I wanted myself, and Mr. Barbour came to me and asked me if I would take Mr. Mercer as an accommodation.

Q. No, I say how long. Was that the first time? A. Oh, no. I have had roomers before.

Q. How long? A. Oh, for the last twelve or thirteen years.

211 Q. Do you usually ask any references of your roomers before you take them to board with you? A. Yes, sir, I do.

Q. You do? A. Yes, sir. I don't take no strangers. It is only people that are sent to me by people.

Q. Did you get a recommendation as to Mr. Mercer's good habits and all when he came to you? A. No, sir, I took him through Mr. Barbour. I didn't ask him——

Q. What did Mr. Barbour tell you about him? A. He didn't tell me anything. And I went to Mr. Barbour—I don't know whether I went to Mr. Barbour or Eddie, the clerk there in Mr. Barbour's office, and he told me he must be a dope fiend, or something, and I was afraid he would die in the house.

Q. You didn't ask anything about Mr. Mercer, though, when he came there? A. No, sir, I didn't.

Q. You simply took him because he was a friend of Mr. Barbour's? A. Yes, sir.

Q. Had you ever seen him before? A. Never had seen him before.

Q. Did you ever hear of him before? A. No, sir, never did.

Q. You had never seen him with Mr. Barbour before, had you? A. No, I never had.

212 Q. Mr. Barbour asked you to take him? A. Yes, sir, he came down to the house and asked me if I would let him have a room; he had just come to Washington, the Major had, from some place.

Q. What was your impression of Mr. Mercer when he first came there? A. Well, my impression was that he must be a hard drinking man on account of his face being so red; he was so bloated like. Of course, as I say, he behaved himself all right for, I think, about two or three weeks—three weeks probably.

Q. Would he go out every morning? A. Yes, sir, then he did.

Q. When would you see him after the morning? A. Well, he used to come in during the day, and then again in the evening and always change his clothes and proceed to go out to dinner in the evening.

Q. He was what you would term a dressy man, would you not? A. Yes, sir. Oh, yes, sir, he used to come in the front part of the house and ask us how he looked, when he would go out to dinner.

Q. What did you tell him? A. Used to tell him, "You look very nice, Major."

Q. Well, he did too, didn't he? A. He did look very nice, for an old gentleman; he was a very nice looking old gentleman when his face was not so red and broken out like.

Q. Now, when he first came to your house was he employed anywhere then, in August, 1905? A. Well, now, I don't think he was; I could not say positive; I don't know that he was; I don't know that he was employed anywhere, only with Mr. Hill—Mr. Moore, wasn't it?

Q. Was he employed with Mr. Moore in August, 1905? A. No, that was later.

Q. About what time was that? A. Well, I don't remember the time that was. It was when Mr. Moore went in business for himself. I don't remember when that was. When he left Mr. Hill to take his office there by himself.

Q. Do you think it was as late as November? A. No, I think it was along during the hot weather, because the Major came home one evening and said he was not going to work any more for \$9.00 a week, and it was too hot and he could not work for \$9.00 a week.

Q. Was he getting \$9.00 a week? A. I think that is what he said, \$9.00 a week.

Q. Now, during the time that he was employed with Mr. Moore, did he go to the office in the morning? A. No, because they used to call up the house. We had a 'phone in the house, and they used to call up to see what was the matter with him.

Q. You mean Mr. Moore did? A. Yes, some one in the office. I think it was Mr. Barbour's son. I think he was in the office with Mr. Moore.

214 Q. Would he call up every morning? A. Well, he called up several mornings.

Q. Several mornings? A. Yes. Not every morning, but a good many mornings.

Q. Well, the mornings that Mr. Mercer would go out, would he go to the office there? A. I don't know whether he would or not.

I don't think he did. I don't think he worked there more than two weeks, anyway.

Q. Well, what seemed to be his habits during the time he was working there? A. Well, about the same as when he was not working.

Q. No, I mean his habits the period during which he was working there as compared to what they were before he went to Mr. Moore and after he left Mr. Moore's?

Mr. HITZ: She says about the same.

Mr. MATTHEWS: No, she says about the same as when he was not working there. I think she misunderstood my question.

A. (Continuing:) Well, I could not tell his habits when he was away from my house, you know. I say his habits was about the same when he was working as when he was not working.

Q. During the period when he was working with Mr. Moore he would spend four or five days in bed without eating anything? A. No, he didn't do that.

Q. During that period? A. No.

Q. Then his habits were not as pronounced as you testified to during the period that he was working with Mr. Moore? A. 215 Well, now, on several occasions he did lay there in bed two or three days, and they called up to see what was the matter with him, and I would just say that he was sick. I think it was Mr. Barbour's son that called up.

Q. Did you let Mr. Mercer know that they were inquiring about him at the office? A. Yes, sir, I used to go to the room and tell him.

Q. What would he say? A. He didn't make me no answer. I used to carry his mail to him and put it in and lay it on the dresser, and say, "Major, here is a letter for you," and he didn't answer me.

Q. Did he read the letter? A. I don't know. I laid it there. He never read any letter before me.

Q. Did you find out the next day that he had read the letter? A. Yes, sir; it would always be put away. He never left any mail lying around or anything.

Q. Now, Mrs. Wallerstein, did you ever see Mr. Mercer drink whiskey? A. No, sir, I did not.

Q. You say you never found any whiskey in his room? A. No. I say he didn't drink whiskey around the house; he drank his whiskey outside.

Q. Well, you never saw him drink any whisky outside? A. No, I never saw him drink; only know that he came in staggering and falling all over everything.

216 Q. Did you ever see him take any drug at all? A. I never seen him take it, no. I saw it in his room.

Q. How do you know that was a drug? A. I don't know it, but I am pretty sure that it was.

Q. How did you form that opinion, though? A. Well, I have seen morphine in these little tablets as those were, and the box was not marked anything, only from the drug store at 9th and E streets.

Q. Well, did you ever see any medicine in little tablets except morphine?

A. Yes, but it is generally marked, medicines are, unless it is something that they don't want it to be known what it is.

Q. Then, you state this was a drug because it hadn't any name at all on it on the box? A. No, sir, I didn't say that. I said the man must have been under the influence of some drug, or he couldn't have laid there sleeping like he did.

Q. But you never saw him take any drug? A. No, sir, I didn't.

Q. And you never saw any drug in his possession? A. No, sir, only on the dresser.

Q. And you don't know that that was a drug. You simply surmised that it was? A. Yes, sir.

Q. Now, you say he was in your house from August, 1905, to May, 1906? A. Yes, sir.

217 Q. Did Mr. Barbour pay all of the rent? A. No, sir, Mr. Mercer, paid me some rent once. He gave me a twenty dollar bill once.

Q. Do you remember what time that was? A. That was along somewheres in the fall or winter, I don't just remember. I made the remark, I said, "You are getting very independent."

Q. Well, was it before or after Mr. Barbour paid you? A. Oh, it was afterwards.

Q. After Mr. Barbour paid you? A. Yes.

Q. And you told him he was getting very independent? A. In paying his own rent.

Q. Well, what did he say then, Mr. Wallerstein? A. I think he just laughed.

Q. He didn't tell you where he got it, did he? A. No, he didn't tell me where he got it, and at that time he bought himself some new clothes, and I made the remark that the Major must have made a raise somewhere.

Q. He had money then, enough to pay you board and buy himself some clothes? A. No, never any board.

Mr. Hirtz: No, there is nothing to show that the gentleman ever eat anything anywhere.

Q. I said board and I meant for the room? A. Yes, sir. He owes me three weeks yet. I must tell Mr. Barbour that.

218 Mr. Hirtz: Well, Mr. Matthews is going to pay his debts when he gets this money.

A. (Continuing:) He stayed in bed so much towards the last that I didn't get a chance to clean his room that I thought he didn't need to pay any rent, and I didn't bother him about it.

Q. Mrs. Wallerstein, you say that he would have to be helped up very often by the janitor when he came home? A. Yes, when he was drinking.

Q. Did you ever see him in that condition? A. Yes, sir.

Q. Did he know you then? A. Yes, I guess he did know me, because he would always commence some of his foolishness, you know.

Q. What do you mean by that? A. Oh, just kidding, you know, like any drunken person will do. I remember in December Mr. Wallerstein broke his limb there one night and the Major wanted to help carry him in the room, and he was awful drunk, and he insisted upon——

Q. You mean Major Mercer? A. Yes; he was awful drunk that night and he insisted upon carrying Mr. Wallerstein in, you know.

Q. Well, did he do it? A. No, he didn't.

By Mr. HITZ:

Q. Why not, Mrs. Wallerstein? A. Why, because he was drunk. They all shoved him away, you know.

By Mr. MATTHEWS:

Q. Would not let him do it? A. Would not let him do it; wouldn't let him touch him. And he said he was an old  
219 soldier and he knew how to carry people with broken limbs.

Q. He always knew your house when he saw it, didn't he, when he was in this condition? A. Well, I don't know that he always did. He always managed to get home there. He was always home there sometime during the night. I don't think he was ever out all night while he was there.

Q. He would not be boisterous at all, would he? A. No.

Q. He would conduct himself just as a gentleman would under the influence of liquor? A. Yes sir. No, he was not a boisterous kind of a man. I don't know what he did out in the street.

Q. Mrs. Wallerstein, what would be his condition after one of these sprees that would last four or five days? A. Well, as I say, his face would be awful red and all broken out in sores.

Q. Well, did he seem to be perfectly conscious then and have his faculties about him when one of these sprees were over? A. Yes. When he would go out doors he seemed to have.

Q. Seemed to be all right then? A. Yes, sir.

Q. And at all other times during this period, except when he was in bed in the condition that you have just described, he would be all right to you? A. Yes, sir, only when he came in full, as I say.

Q. You didn't notice anything strange in his conduct at  
220 all, did you? A. No, I can't say that I did.

Signature of witness waived by consent of Counsel.

J. ARTHUR LYNHAM, *Examiner.*

221 Thereupon JOHN M. GREEN, called as a witness on the part of the defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. HITZ:

Q. What is your occupation, Mr. Green? A. Special Examiner in the Pension Office.



Q. How long have you been in that occupation? A. Well, I have been an Examiner since 1882. I have been a special Examiner since, let's see, since 1897, about January, I guess.

Q. How long have you been in the Pension Office? A. Since 1882.

Q. Where were you living since November, 1905? A. I guess I was with Mr. Wallerstein; had a room there. I don't remember the date I went there exactly.

Q. When did you leave there? A. Well, now, you got me; I don't remember the date I went there exactly. I left there soon after she moved. Let's see when was that. I stayed there over a year.

Q. When did you go there? A. I went there in the fall of 1905; January 1905, that's when it was.

Q. Now, then, you went there in January, 1905, and you stayed there until Mrs. Wallerstein left, is that what I understand? A. Yes, I stayed there a month after she left, but I don't know when she left. I can't fix dates. I must have been there a year  
222 and a half.

Q. Where was the house? A. I have forgotten the number. It was the Barbour flat on Tenth street just below the cigar store. What is the number now? On the East side of Tenth between D and E.

Q. Well, did Mr. Carroll Mercer have a room there at the time you were there? A. Yes, sir.

Q. Well, was his room near to your room? A. Well, it was within ten feet, I guess.

Q. Did you know him at that time personally? A. Yes; talked with him lots of times.

Q. What was his condition with respect to drinking and drunkenness and other things at that time? A. Well, when he came there we had several talks together, and he insisted upon coming in my room and talking, and I found that he was addicted to drink to a great extent. I had to take him out of my room once or twice and take him to his room, and after that I avoided him.

Q. Would he drink to excess? A. Why, certainly; he would get drunk. I suppose that is excess.

Q. How frequently, if you know? A. Why, every night. Every night he was in the same condition I imagined from his talks in his room, and wandering around. Lots of times I would get up and turn my light down to keep him from looking through the key hole to see whether I was there or not, so he would come in there and have a talk. I didn't like to push him off entirely, you know,  
223 and get angry with him. Once or twice he got angry.

Q. From your room could you hear him talking and moving about? A. Oh, yes, distinctly. Distinctly. You know how those flats are built, a small, narrow partition between.

Q. Small, narrow partition between the rooms? A. Yes, sir.

Q. What sort of mental condition was he in during the period of his stay there? A. Well, I don't think he was right at all. He would get on one subject, and the first thing he would be quoting Shakespeare or some other writer. He would not stick to the subject at all.

Q. Did you have any business transactions with him? A. None whatever.

Q. Would you be willing to have a business transaction with him? A. No, sir, I would not.

Q. Why not? A. Because he was not capable, I don't think.

Q. Do you know anything about his taking drugs? A. Nothing, except that Mrs. Wallerstein came to me one day and said she was uneasy for fear something had happen- to him, and she brought me a box of something that she thought was pills or morphine or strichnine.

Q. Did you see them? A. Yes, sir.

224 Q. What was it? A. Globules.

Q. Do you know whether they were morphine or not? A. No, sir, I do not.

Q. You said that during your acquaintance with Carroll Mercer there, in the fall of 1905, you found him unable to talk connectedly about matters in conversation? A. Yes sir.

Q. And you think his mental condition was such that he could not conduct business? A. I certainly do.

Q. And that you would not have conducted business with him? A. Certainly not.

Mr. HIRTZ: Now, Mr. Matthews, I presume that is the substance of this gentleman's testimony. Now, we can go over it, if you want to. I can go on with this witness further, but I think that is the substance of it:

Mr. MATTHEWS: Well, you can go as far as you want; he is your witness.

#### Cross examination.

By Mr. MATTHEWS:

Q. Did you know Mr. Mercer before you met him at this house? A. No, sir.

Q. Did you ever see him sober while you were there? A. No, sir.

Q. Then you never had an opportunity of judging of his mental capacity, except when he was under the influence of liquor? 225 A. No, I never had. Of course I didn't see him sober that I know of.

Q. You were engaged during the day pretty much, were you not? A. Yes, sir. I usually got home about half past five.

Q. When would he usually get in? A. He was generally in when I got there. He took a fancy to me some way, and wanted to see me and talk with me. I don't know why. He wanted somebody to talk with, I suppose.

Q. What was his general appearance as to dress? A. Why, he kept in pretty good shape, I thought. He looked clean always. He didn't look like a man that didn't take care of himself. His face was very red most of the time, bumps or something broke out on his face, I don't know what that was.

Q. Did he ever talk to you about any business matters? A. No. He talked of some schemes he had on hand, but I can't remember

what they were now; something he was going to do to make some money. He was a great one to imagine that he had some great means coming to him, and he would tell me about it, but I have forgotten just where he said it was coming from, or how he was going to get it, or anything about it.

Q. Was he employed during that time? A. Well, it strikes me he was but I don't know where. And I think I got that information, though, from Mrs. Wallerstein. I think she said he was  
226 employed for a small sum. She used to tell about the life he used to lead in affluence; plenty all around him, and she thought it was pretty hard for him to have to work for a small sum of money.

Q. You knew nothing about that yourself? A. No, sir.

Q. All that information came from Mrs. Wallerstein? A. No, I don't know. Mrs. Wallerstein was telling it, and she seemed to be uneasy a great deal of the time for fear he would do something wrong.

Q. Did you ever see him drink in his room? A. No, sir; never was in his room but once. He asked me to take a drink and I declined.

Q. Did you ever see him taking any drugs, or anything of that kind? A. I never saw him taking any, sir.

Q. You don't know that this was morphine or any other drug, in this box that Mrs. Wallerstein showed you, do you? A. No, I don't. I don't know that it was. I know it was something that persons take, because it looked like medicine of some kind.

Signature of witness waived by consent of Counsel.

J. ARTHUR LYNHAM, *Examiner*.

(At this point an adjournment was taken until further notice.)

227 TUESDAY, *June 9th*, 1908—2 o'clock p. m.

Met, pursuant to agreement, at the office of McKenney and Flannery, in the Hibbs Building, to resume the taking of testimony on the part of the defendant.

Present: Henry S. Matthews and Philander A. Bowen, Esqrs., Solicitors for the complainant; Frederick D. McKenney and William Hitz, Esqrs., Solicitors for the defendant, the complainant in proper person, and the Examiner.

Whereupon—

The complainant, at the request of Mr. McKenney, produces the following checks heretofore referred to in the course of the testimony as covering the various payments made by him on account of the loan to Carroll Mercer on the Baltimore lot, and states that said checks represent all the money which passed from him (the complainant) to any one in connection with this transaction.

(The said checks referred to are herewith copied into the record, agreeably to the request of counsel, as follows:)

No. —. WASHINGTON, D. C., *Nov.* 11, 1905.

The Metropolitan Citizens National Bank of Washington, D. C.  
Pay to the order of N. H. Baker \$100.00 One Hundred Dollars.  
C. B. HIGHT.

.(Endorsements.)

228 N. H. Baker  
Pay to the order of  
National Metropolitan Citizens' Bank  
of Washington, D. C.  
David Moore.  
Rec. Teller.  
No. —. Paid Nov. 13 1905. 2.  
Nat'l Metropolitan Citizens Bank.

No. 827.

WASHINGTON, D. C., *Nov.* 16, 1905.  
Pay to the order of Carroll Mercer Esq. \$180.00 One Hundred &  
Eighty Dollars.  
C. B. HIGHT.

To National Metropolitan Citizens Bank of Washington, D. C.

(Endorsements.)

Carroll Mercer.  
James F. Barbour.  
Columbia National  
Washington, D. C.  
Nov. 18 1905.  
All Prior Endorsements  
Guaranteed.

No. 826.

WASHINGTON, D. C., *Nov.* 16, 1905.  
Pay to the order of Carroll Mercer Esq. \$10.00 Ten Dollars.  
C. B. HIGHT.

To National Metropolitan Citizens Bank of Washington, D. C.

(Endorsements.)

Carroll Mercer.  
B. Mannix.

229 NOTE.—The taking of testimony on the part of the com-  
plainant and defendant, respectively, is here announced as  
closed.

J. ARTHUR LYNHAM, *Examiner.*

230

## DEFENDANTS' EXHIBIT No. 1.

DISTRICT OF COLUMBIA, ss:

I, Nathan H. Baker do solemnly swear that I am now, and for several years past have been engaged in a general real estate and brokerage business in the City of Washington, D. C. that some time during the early part of November 1905, I was approached by Mr. Carroll Mercer of this City, who informed me that he was entitled to a legacy under the will of his grandmother, Mrs. Sally S. Carroll and that he desired to sell his interest in this legacy. He then requested me to find a purchaser for same. I then approached Mr. Clarence B. Hight also of said City in regard to the matter and secured from him a promise to purchase this interest of Mr. Mercer giving in exchange therefore a certain lot of ground on Raynor Avenue in the City of Baltimore, State of Maryland in fee simple, and further promising to make Mr. Mercer a loan which should be secured upon said Baltimore lot. I then secured from Mr. Mercer an agreement in writing dated November 11th 1905 which is hereto annexed. This agreement I took to Mr. Hight who objected to the amount stated therein to be loaned on the Baltimore lot. I then returned to Mr. Mercer who agreed to a reduction of the amount to be loaned on the Baltimore lot to \$275.00 which arrangement was acceptable to Mr. Hight.

231 A few days later Mr. Mercer informed me that on account of the absence of his wife from the City, it would be impossible for him to execute a mortgage on the Baltimore lot, but that he would be satisfied with an agreement from Mr. Hight to deed to him the Baltimore lot upon the payment of the \$275.00 at any time within one year. This option was given by Mr. Hight in the agreement between him and Mr. Mercer, dated November 16, 1905 and upon receipt of this option and the \$275.00 in cash Mr. Mercer, as evidence of the sale to Mr. Hight of his interest in this legacy above referred to, executed an assigned thereof to Mr. Hight.

During the entire course of the negotiations between Mr. Hight and Mr. Mercer nothing but an absolute sale of the interest of Mr. Mercer in this legacy was contemplated.

NATHAN H. BAKER.

Witness:

HUGH B. ROWLAND.

Subscribed and sworn to before me this 7th day of February  
A. D. 1906.

[SEAL.]

HUGH B. ROWLAND,  
*Notary Public.*

Offices of David Moore, Real Estate, Loans, and Insurance, 1328  
New York Avenue, Washington, D. C.

Telephone Connection.

Nov. 11, 1905.

For value received I assign all my right, Title and interest in the Estate of the late Sally C. Carroll the said interest consisting of a three sevenths interest in a certain Deed of Trust given on the property known as 1801 F Street North West, Washington, D. C. the said deed of trust haveing been given by Hon. M. W. Fuller and Mary E. Fuller his wife to secure the payment of \$7,841.24 cents. My interest in the above Deed of trust amounting to three sevenths of the above amount I assign to C. B. Hight in consideration of the payment of \$75 in hand this day paid me by his authorized Agent N. H. Baker. The said C. B. Hight agrees to deed to whomsoever I may designate a deed for a certain lot located on Rayner Avenue Baltimore Maryland, and also agrees to loan me in addition to the sum received from N. H. Baker a further amount of \$425 the said Five hundred dollars to be secured to the C. B. Hight by a first deed of trust on the Rayner Avenue lot.

It is understood that the said interest that I am here selling is sold subject to a life estate in the said Trust given by Mr. Fuller and wife, the said life interest being held by my uncle Charles Carroll who was born in the year of 1839.

In Witness to the above I set my hand and seal.

CARROLL MERCER. [SEAL.]

Witness:

N. H. BAKER.

Carville D. Benson.

Harry E. Karr.

Law Offices Benson & Karr, 301 St. Paul Street, Third Floor.

C. & P. Mt. Vernon 3017.

Maryland B. 5591.

BALTIMORE, Nov. 15, 1905.

Clarence B. Hight, Esq., 722 Colorado Bldg., Washington, D. C.

MY DEAR HIGHT: As per your request I herewith inclose you Deed from Mrs. Hight and yourself to Mr. Mercer of the Rayner Avenue lot, also mortgage from Mercer back to Mrs. Hight.

Your attention is called to the spaces to be filled in in the mortgage and also to the fire insurance clause in the mortgage. I presume this lot is still vacant and consequently you will want to strike out the fire insurance clause, you however know and I do not.

You can send me a \$10 bill for the work, I am

Very truly yours,

H. E. KARR.

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## DEFENDANT'S EXHIBIT No. 3.

Clarence B. Hight, Real Estate Investments, Colorado Building.

WASHINGTON, D. C., *October* 19, 1906.

Carroll Mercer, Esq., 3132 P Street. N. W., Washington, D. C.

DEAR SIR: I beg to call your attention to the conditions of the agreement between us, dated November 16, 1905. Whereby you are entitled to a deed in fee simple of a certain lot of ground in the city of Baltimore, State of Maryland, upon repaying to me the Two Hundred and Seventy Five Dollars (\$275) loaned you on this property on the date above referred to.

I have recently received an inquiry in regard to this property and on account of same, feel that an advantageous sale could be made at this time. I must therefore, insist upon a strict compliance by you in our agreement, as if you do not intend to take over the property, I desire to avail myself promptly of any opportunity to sell.

Very truly yours,

C. B. HIGHT.

*Memorandum.*

Defendants' Exhibits Nos. 4, 5, 6, 7 and 8, will be found on pages numbered from 143 to 148, both inclusive.

235

*Decree.*

Filed October 27, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 26799.

CLARENCE B. HIGHT, Complainant,

*vs.*

JOHN MARSHALL BROWN, Trustee; ALIDA CATHARINE BROWN, Executrix, and CARROLL MERCER, Defendants.

This cause coming on to be heard on the bill of complaint, answers and proofs taken therein, and having been argued to the Court by the counsel for the respective parties thereto, it is, by the Court, this 27th day of October, A. D. 1908, adjudged, ordered and decreed that the defendant, Alida Catharine Brown, Executrix of the defendant trustee, John Marshall Brown, deceased, pay over to the complainant, or to his solicitor of record in this cause, the sum of Two Thousand, Three Hundred, Fifty-Two Dollars and thirty-seven cents (\$2352.37), with all accretions thereto received by said trustee or by his said executrix since January 14th, 1906, the said sum being admitted by the answer of said defendant trustee to be the amount of the legacy bequeathed to the defendant Carroll Mercer, under the terms and conditions of the last will and testament of Sally Carroll, deceased, and costs to come out of the fund.

WRIGHT.



236 *Order for Entry of Appeal and Issuance of Citation.*

Filed November 5, 1908.

In the Supreme Court of the District of Columbia, the 5th Day of November, 1908.

Equity. No. 26799.

CLARENCE B. HIGHT

*vs.*

JOHN MARSHALL BROWN, Trustee; ALIDA CATHARINE BROWN, Executrix; CARROLL MERCER, Intervenor.

The Clerk of said Court will please enter an appeal on behalf of the defendants from the decree passed herein on October 27th 1908, and issue citation thereon.

F. D. McKENNEY,  
WILLIAM HITZ,

*Attorneys for Alida Catherine Brown, Executrix,  
and Carroll Mercer, Defendants.*

237 In the Supreme Court of the District of Columbia.

No. 26799. In Equity.

CLARENCE B. HIGHT

*vs.*

JOHN MARSHALL BROWN ET AL.

The President of the United States to Clarence B. Hight, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal noted in clerk's office of the Supreme Court of the District of Columbia, on the 5<sup>th</sup> day of November, 1908, wherein Alida Catherine Brown, Executrix & Carroll Mercer intervenor are Appellants, and you are Appellee, to show cause, if any there be, why the Decree rendered against the said Appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, this 5th day of November in the year of our Lord one thousand nine hundred and Eight.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,  
By F. E. CUNNINGHAM,  
*Ass't Clerk*.

Service of the above Citation accepted this 5<sup>th</sup> day of Nov., 1908.

P. A. BOWEN, JR.,  
*Attorney for Appellee*.

[Endorsed:] No. 26799. Equity. Hight *vs.* Brown, Citation. Issued Nov. 5, 1908. Citation on compl't returned service accepted Nov. 6, '08.

238

*Order Fixing Bond for Costs on Appeal.*

Filed November 6, 1908.

In the Supreme Court of the District of Columbia.

No. 26799.

CLARENCE B. HIGHT, Complainant,

vs.

JOHN MARSHALL BROWN, Trustee; ALIDA CATHARINE BROWN, Executrix, and CARROLL MERCER, Intervenor, Defendants.

It appearing to the Court that the defendants in the above-entitled cause have taken an appeal to the Court of Appeals of the District of Columbia, from the decree entered herein on the 27th day of October, 1908, on motion of the attorney for the defendants, the amount of the bond for costs in said appeal is hereby fixed at two hundred Dollars this 6th day of November 1908.

*Directions to Clerk for Preparation of Transcript of Record.*

Filed November 9, 1908.

In the Supreme Court of the District of Columbia, the 9th day of November, 1908.

Equity. No. 26799.

CLARENCE B. HIGHT

vs.

JOHN MARSHALL BROWN ET AL.

239 The Clerk of said Court will please prepare transcript of record to consist of the following papers: Bill, Answer of John Marshall Brown, Petition of Carroll Mercer to be made party defendant, Order granting leave to Carroll Mercer to intervene, Separate Answer of Carroll Mercer, Suggestion of Death of Brown, Order substituting Alida C. Brown, Executrix, in place of John Marshall Brown, deceased, All testimony and exhibits, Replications, Decree of Oct. 27, 1908, Entry of appeal and citation, Appeal Bond, and this designation.

WILLIAM HITZ,  
*Attorney for Defendants.**Memorandum.*

November 13, 1908.—Appeal bond approved and filed.

240 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 239, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 26799 In Equity, wherein Clarence B. Hight is Complainant and Alida Catherine Brown, Executrix and Carroll Mercer, Intervenor, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 30th day of December, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1976. Alida Catherine Brown, executrix, *et al.*, appellants, *vs.* Clarence B. Hight. Court of Appeals, District of Columbia. Filed Dec. 31, 1908. Henry W. Hodges, clerk.

